

**CRM 2201 of 2021
(Via Video Conference)**

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with Amherst Street P.S. Case No.04 of 2020 dated 06.01.2020 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: **Abu Taher Mandal @ Sentu.**

....Petitioner.

Mr. Sandipan Ganguli
Mr. Araf Mandal

...for the Petitioner.

Mr. Sanjoy Bardhan,
Mr. Palash Chandra Majhi

...for the State.

The petitioner is one of the two accused persons charged under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Ganguli, learned senior counsel appearing for the petitioner submitted that the heroin that was recovered from the petitioner was of intermediate quantity, not of commercial quantity and, therefore, the bar provided under Section 37 of the NDPS Act would not apply. He further submitted that the coordinate Bench rejected the petitioner's earlier prayer for bail on the basis that commercial quantity of contraband was recovered from the petitioner. He submits that the observation of the previous Bench that the petitioner dealt in narcotic substance above commercial quantity is based on statement made by the co-accused. Such a statement cannot be admitted in evidence in view of the decision of the Hon'ble Supreme Court in the case of *Tufan Singh v. State of T.N. reported in 2020 SCC Online SC 882*. He submitted that once the statement of the co-accused is discounted,

there is nothing to show that the petitioner dealt in commercial quantity of contraband.

Learned counsel for the State strongly opposed the prayer for bail. He produced the case diary.

We have perused the same.

We have seen the order dated August 18, 2020 passed by the previous coordinate Bench rejecting the petitioner's prayer for bail. We understand that the previous Bench looked at the recovery from the petitioner and the co-accused persons as a chain of transactions. Undisputedly, commercial quantity of heroin was recovered from the co-accused i.e. 786 grams. 786 grams taken with 61 grams would be much beyond the commercial quantity. Whether or not the petitioner and the co-accused dealt with contraband as part of a series of transactions will be established at the trial.

Having considered the material on record and also the earlier rejection of the petitioner's prayer for bail, we are not inclined to allow this application. We are of the opinion that the earlier rejection order was not based only on the statement of the co-accused.

Accordingly, CRM 2201 of 2021 fails and is dismissed.

We are told that 29th July, 2021 has been fixed for framing of charges.

We trust and hope that the framing of charges will be completed on that date.

(Arijit Banerjee, J.)

(Arindam Mukherjee, J.)