

CRM 2392 of 2021

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Jalangi Police Station** Case No. **574 of 2019** dated **20.08.2019** under Sections **20(b)(ii)(b)/22/29** of the NDPS Act.

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In the matter of : Jan Mahammad Biswas @ Jan Mahammad @ Jan Mohammad Biswas @ Jan Mohammad

.... Petitioner.

Mr. N. S. Ghosh,
Mr. T. Gupta,

... For the Petitioner.

Mr. B. Panda,
Mr. P. Saha,
Mr. S. Bhakat,

... For the State.

The petitioner has been implicated under the provisions of the Narcotic Drugs and Psychotropic Substance Act, 1985. He says that nothing was recovered from him. However, he was taken into custody. While in custody he made a statement that commercial quantity of phensedyl was lying in the house of one Swapan Sarkar. On the basis of such statement, the police recovered the contraband items from Swapan's house. He says that at best he is a witness. There was no recovery from the petitioner. He is in custody for about 761 days. He prays for bail.

The State says that he was aware that the contraband item was in Swapan's house. Hence, he was also guilty of the offence of possessing or dealing in commercial quantity of contraband.

Prima facie, we are unable to agree with the State's contention. The petitioner was in custody when recovery was made from a place to which other people also had access. In this

connection we may refer to a decision of a Coordinate Bench of this Court rendered on September 2, 2019 in CRM 7537 of 2019.

In view of the facts and circumstances aforesaid, we are of the view that the restrictions contained in Section 37 of the Narcotic Drugs and Psychotropic Substance Act, 1985 are not attracted. The petitioner is in custody for a very long period of time. Only 6 out of 19 witnesses have been examined. It is anybody's guess as to when the trial would conclude.

On an overall assessment of the facts and circumstances of the case we are of the view that the petitioner's prayer for bail may be allowed.

Accordingly, we direct that the petitioner, namely, **Jan Mahammad Biswas @ Jan Mahammad @ Jan Mohammad Biswas @ Jan Mohammad** shall be released on bail upon furnishing a bond of Rs. 10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Judge, Special Court under the NDPS Act, Berhampore, Murshidabad and on further conditions that he shall not leave the jurisdiction of the concerned police station and shall report to the Officer-in-Charge of the concerned police station once in a fortnight until further orders. The petitioner shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.

The application for bail is, accordingly, allowed.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Bivas Pattanayak, J.)

(Arijit Banerjee, J.)