

22.07.2021
Court No.30
Item No. 11
Kole
Allowed

CRM 2662 of 2020
(Via video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : **Sanjay Das**

.....Petitioner

Mr. Ayan Bhattacharjee,
Mr. Sagnik Mukherjee

..... For the Petitioner

Mr. K. K. Maiti,
Mr. Tapan Bhanka

.... For the opposite party

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with NDPS Case No. 3 of 2019 arising out of SIB Port Case being F. No. S121-135 of 2018 dated 05.03.2019 under sections 22(c) of the NDPS Act.

Mr. Bhattacharjee, learned advocate, appearing for the petitioner submits that the petitioner has been falsely implicated. On the basis of the notices issued under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), the petitioner twice appeared before the competent authority. There had been no recovery of contraband substance from the possession of the petitioner. He was arrested on 5th March, 2019 on the purported pretext that his name was mentioned in the concerned parcels as the consignee. Upon completion of investigation, charge-sheet has also been

submitted and as such further detention of the petitioner, who is in custody for 870 days, is not necessary.

He submits that the petitioner's statements, as recorded under Section 67 of the NDPS Act, are inadmissible in law in view of the judgement delivered in the case of *Tofan Singh-vs.-State of Tamil Nadu*, reported in *2020 SCC Online SC 882*.

Mr. Maiti, learned advocate appearing for the opposite party opposes the petitioner's prayer for bail and submits that there are materials on record which clearly reveal the involvement of the petitioner in the offence pertaining to contraband substance above the commercial quantity. In support of his contention, he has placed reliance upon the minority view in the case of *Tofan Singh (Supra)*.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Prima facie, in the absence of incriminating materials on record against the petitioner save and except the statements as recorded under Section 67 of the NDPS Act, which are inadmissible in law, in view of the judgment delivered in the case of *Tofan Singh (Supra)*, he cannot be detained only on the basis of mere suspicion and as such the rigors of Section 37 of the NDPS Act are not attracted. Upon completion of investigation, charge-sheet has also been submitted and in view thereof, further detention of the petitioner is not warranted.

Accordingly, we direct that the petitioner, namely, **Sanjay Das**, 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 Special Judge under the NDPS Act, Bench-I, City Sessions Court, District Kolkata.

It is further directed that the petitioner shall not tamper with the evidence or intimidate the witnesses.

The petitioner shall also attend the learned Court below on all the dates, as specified for hearing.

In the event the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 2662 of 2020, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this court.

(Suvra Ghosh, J.)

(Tapabrata Chakraborty, J.)