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31-05-2021
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CRM No. 2490 of 2021

(Via Video Conference)

In the matter of an application for bail under Section 439 of
the Code of Criminal Procedure, 1973.
And

In Re : Prag Jyoti Saikia @ Partho– petitioner

Mr. Milon Mukherjee –Sr. Advocate
Mr. Raj Kamal ...for the petitioner

Mr. S.
Mr. Gupta ... for the State

Learned senior counsel Mr. Milon Mukherjee submits
that the petitioner has renewed his prayer for release on bail
on any condition pursuant to the liberty given to him by an
order dated 25.2.2020 of the Hon'ble Supreme Court passed
in Special Leave to Appeal (Crl.) No(s). 5439/2019
challenging the order passed by a Co-ordinate Bench of this
Hon'ble Court on 11.04.2019 in CRM 3833 of 2019 pointing
out the fact that no contraband was recovered from the
possession of the petitioner. Yet, the observation was made
that there is a link evident from the material on record, of
involvement of the petitioner in the transaction of the
contraband.

It would appear from the solemn order of the Hon'ble Supreme Court dated 25.2.2020 that liberty was granted to the petitioner to prefer to renew the application for bail after material witnesses in the matter are examined in the trial. Trial has not been concluded as yet. Even the material witnesses have not been examined except the defacto complainant examined in part, deferred on the prayer of the prosecution.

It is submitted on behalf of the State counsel that only the defacto complainant has been examined in chief in part and was deferred because of the fact that the Court was lying vacant and on the prayer of the learned Public Prosecutor the date was fixed on 12.02.2021 for evidence of PW-1. But the evidence could not be taken on the date fixed as the petitioner had filed an application for bail and the bail application was rejected. However, the evidence of PW-1 was resumed and examined in part on the prayer of the prosecution. It is further submitted on behalf of the State counsel that the defence has taken 17 adjournments after submission of charge sheet which resulted in delay in framing of the charge.

It is pointed out that the petitioner is in custody for about 966 days without trial.

Mr. Mukherjee, learned counsel appearing on behalf of the petitioner has invited our attention to the provisions of

Section 29 of the NDPS Act and Section 107 of IPC to submit that criminal conspiracy is not defined in the old provision of Indian Penal Code.

We are of the view that Narcotic Drugs and Psychotropic Substances Act, 1985 is a complete code. We do find observation of the Co-ordinate Bench of this Hon'ble Court headed by Hon'ble Justice Sanjib Banerjee, J. that there is evidence of transportation of large quantity of narcotic substances as against the petitioner. We are also of the view that there is provision under Section 35 of the NDPS Act with regard to presumption of culpable mental state which can also be taken note by the Trial Court to ascertain whether there is a link of evidence as against the petitioner revealing his culpable mental state at the trial in accordance with the evidence to be adduced by the prosecution.

In consideration of the stage of the trial that material witnesses have not yet been examined in view of the pandemic situation due to Covid-19, and having regard to the gravity of offence, the prayer for bail is rejected at this stage.

Now, it is expedient on the part of the learned Trial Court to conclude the trial as expeditiously as possible following the mandate of the provision of Section 309 Cr.P.C. and the guidelines embodied by the Hon'ble Supreme Court

in Thana Singh Vs. Central Bureau of Narcotics case (2013) 2 SCC 603.

Thus, the application for bail is rejected. Consequently, application being CRM 2490 of 2021 is dismissed.

(Aniruddha Roy, J.)

(Shivakant Prasad, J.)