

CRM 3124 of 2020
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IA NO:CRAN/1/2020 (Old NO:CRAN/1511/2020)

In re : An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No.136 of 2017 dated 06-09-2017 under Section 20(b)(ii)(c) of the NDPS Act read with Section 8(c) of the NDPS Act, 1985.

- **And** -

In the matter of : Samar Kumar Swarnakar
... Petitioner.

Mr. Ayan Bhattacharjee,
Mr. Partha Ghosh,
Mr. Sagar Saha

... For the Petitioner.

Mr. Neguive Ahmed, learned APP,
Mr. Sanjoy Bardhan,
Ms. Manisha Sharma

... For the State.

1. The petitioner in this application for bail was a Joint Commissioner of Excise. He says that he headed a raid and seized approximately 20 kgs. of contraband (Ganja) from the other accused persons. However, pursuant to an investigation, he has also been arraigned as an accused person in NDPS Case No.136 of 2017 dated 06-09-2017 under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 8(c) of the said Act. The case is pending before the learned Judge, Special Court, NDPS Act, Nadia at Krishnagar.

2. Learned counsel for the petitioner submits that the petitioner has been framed. He was the person who was instrumental in seizing the contraband. The primary material on which the prosecution relies is a statement of the petitioner under Section 67 of the NDPS Act. Learned counsel referred to

a recent decision of the Hon'ble Apex Court in the case of Tofan Singh -Vs.- State of Tamil Nadu reported in 2020 (12) SCALE 519, in support of his submission that such a statement is not admissible evidence against the person making such statement. It is further submitted that the basis on which the petitioner has been arraigned as a co-accused is that, allegedly 200 kgs. of Ganja was recovered, but the petitioner showed the same as 20 kgs. Learned counsel submitted that this could at best be an offence under the Prevention of Corruption Act, but does not amount to an offence under any of the provisions of the NDPS Act. The petitioner is in custody for more than 1000 days. Charge-sheet has been issued. Custodial detention of the petitioner is not necessary any further.

3. Learned counsel for the State submits that the petitioner is the kingpin of the entire racket. The ostensible raid was just a show. The call records gathered by the Investigating Officer clearly establish the complicity of the petitioner. Trial has started. One out of the six prosecution witnesses has already been examined. There is likelihood of the petitioner tampering with evidence if he is enlarged on bail. Bail should not be granted to the petitioner. The trial may be directed to be expedited.

4. We have considered the rival contentions of the parties. The petitioner was a Joint Commissioner of Excise. We are of the view that if he is enlarged on bail, he may be in a position to influence the witnesses taking advantage of the high position that he held previously. The amount of contraband involved is huge and much more than the commercial quantity. There is also a statutory bar to grant of bail under Section 37 of the NDPS Act.

5. In view of the aforesaid, we are not inclined to allow the petitioner's prayer for bail at this stage. However, we request the learned trial Court to expedite the trial and make all efforts

to conclude the trial within six months from the date of a copy of this order being placed before the learned Court below.

6. CRM 3124 of 2020 and the connected application are, accordingly, disposed of.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)