

09.08.2021

Court No.28
Item No.15
(REJECTED)

Ab

CRM 3068 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed on 26.03.2021 in connection with NCB Crime No. 51/NCB/KOL/2018 dated 21.10.2018 under Sections 8(c)/20(b)(ii)(C)/29 of the NDPS Act (NDPS Case No. 35 of 2018);

And

In the matter of : **Md. Washim.**

...Petitioner.

Mr. Karan Dudhwewala.

...For the Petitioner

Mr. Y. J. Dastoor, Ld. ASG,
Mr. Phiroze Edulji,
Mr. Abhisek Addhya.

... For the Union of India

The Advocate-on-record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking, the application is taken up for hearing.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure in connection with NCB Crime No. 51/NCB/KOL/2018 dated 21.10.2018 under Sections 8(c)/20(b)(ii)(C)/29 of the Narcotic Drugs and Psychotropic Substances Act.

The petitioner is renewing the prayer for bail in connection with the aforementioned case. This Bench rejected the earlier application for bail being CRM 3485 of 2020 on 15th May 2020 even after noticing the fact that no recovery of contraband was made from the petitioner, as he was implicated on the basis of the statement of the co-accused.

The instant case pertains to an transportation of the

contraband to various countries. The holder of consignment was apprehended and during investigation it transpires that all such contraband was taken from the petitioner. The call details would also reveal some linkage with the principal accused.

Since 15th May 2020, when the last application was rejected by this Court, we do not find any changed circumstances warranting different decision to be taken.

The Co-ordinate Bench judgments have been cited before us in case of Abdul Malique & Ors., passed in CRM 8145 of 2020 (decided on 21st December 2020) and Bablu Sk. @ Saddam Hossain, passed in CRM 8480 of 2020 (decided on 21st October 2020) and the other judgments touching upon the same issue in support of the contention that the disclosure of the name by a co-accused is not admissible in law and the call details report also does not constitute admissible evidence.

We have gone through the judgments. There is no difficulty in accepting the proposition that the statement of the co-accused made before the police is not reliable piece of evidence unless a nexus is established with cogent materials. It is a degree of evidence and the quality of materials produced before the Court at the time of trial to adjudicate whether the petitioner is a guilty or not.

So far as the recording of call details and other telephonic conversation is concerned, there is a specific observation made by the Co-ordinate Bench regarding raising suspicion. However, a distinction is sought to be made that it may not justify conspiracy. Once a prima facie link is established, the onus lies on the accused to rebut the presumption under the Narcotic Drugs and Psychotropic

Substances Act.

All such points, which are raised by the petitioner, are the matter of trial and if raised, the Court will decide the same but because of the incriminating materials having prima facie found against the petitioner and there being no changed circumstances since the rejection of the earlier application for bail filed by the petitioner, we do not find that it is a fit case where the petitioner deserves different treatment than what had already been extended to him on an earlier occasion.

The application for bail being CRM 3068 of 2021 is **rejected**.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)