

02.06.2021
Court No.28
Item No. 24
sn

CRM 3651 of 2021 (Via video Conference)

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

And

In Re: **Tapas Choudhury @ Tota**

Petitioner

Mr. Sudip Ghosh Chowdhury

For the Petitioner

Mr. Saibal Bapuli

Mr. Arijit Ganguly

Mr. A. Bhattacharjee

For the State

The present application for bail under section 439 of the Code of Criminal Procedure has been preferred in connection with Serampore Police Station Case No.368 of 2019 dated 18.08.2019 under sections 20(b)(ii)(c) of the NDPS Act.

Mr. Ghosh Chowdhury, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. His name has transpired on the basis of statement of a co-accused before the police officer, which is inadmissible in evidence. There has been no recovery of contraband substance above the commercial quantity from his possession. Upon completion of the investigation, charge sheet has also been filed and as such further detention of the petitioner, who is in custody since 22nd August, 2019, is not necessary.

He further submits that another co-accused person had already been enlarged on bail by an order dated 02.03.2020 passed by a co-

ordinate Bench of this Court in an application being CRM 2193 of 2020.

Mr. Bapuli, learned Advocate appearing for the State opposes the petitioner's prayer and submits that though contraband substance above commercial quantity has not been recovered from the petitioner, he is involved in other criminal cases and such antecedents disentitle him from availing any remedy in this application.

In reply, Mr. Ghosh Chowdhury submits that the cases in which the petitioner is involved are not NDPS cases and he has already been enlarged on bail in the said cases.

We have heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

It appears that the petitioner's name has transpired on the basis of statement of a co-accused person before the police officer, which is inadmissible in evidence. Contraband substance recovered from his possession is below commercial quantity and as such the rigors of Section 37 of the NDPS Act are not attracted.

The petitioner is languishing in custody for a period of one year and nine months and there is no possibility towards conclusion of the trial in the near future. Article 21 creates a right in the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice [See the judgments delivered in the case of *Hussainara Khatun Vs. State of Bihar, Patna*, reported in (1980) 1 SCC 81 and *Abdul Rehman Antulay & Ors. Vs. R.S. Nayan & Anr.* reported in (1992) 1 SCC 225].

In the present pandemic situation and the rapid proliferation of the virus, bail should be granted liberally unless custodial detention of the accused is absolutely essential [See the order passed by the Hon'ble Supreme Court in *Re: Contagion of Covid-19 Virus in Prisons*].

In the said conspectus, we are of the opinion that further detention of the petitioner is not warranted.

Accordingly, we allow this application and direct that the petitioner namely, **Tapas Choudhury @ Tota**, 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 Additional Sessions Judge, Special Court, Hooghly.

The petitioner shall meet the Inspector in-charge, Serampore Police Station, once a week on and from June 8, 2021 until further orders.

He shall also attend the learned Trial Court on the date as specified for hearing.

In the event, the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned trial court shall be at liberty to cancel the bail of the petitioner without any further reference to this Court.

Accordingly, the application for bail being CRM 3651 of 2021 is disposed of.

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

(Shampa Sarkar, J.)

(Tapabrata Chakraborty, J.)

