

22.09.2021

CRM 3806 of 2021

Court No.28
Item No.8
(ALLOWED)

Ab

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed on 25.05.2021 in connection with STF Police Station Case No. 38 of 2019 dated 14.10.2019 under Sections 22(C)/29 of the NDPS Act (NDPS Case No. 43 of 2019);

And

In the matter of : **Syed Sahid Ahamed @ Sakil Ahmed.**
...Petitioner

Mr. Souvik Mitter,
Mr. Saudip Dinda.

...For the Petitioner

Mr. Sanjay Bardhan,
Mr. Palash Chandra Majhi.

... For the State

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with STF Police Station Case No. 38 of 2019 dated 14.10.2019 under Sections 22(C)/29 of the Narcotic Drugs and Psychotropic Substances Act.

A piquant situation arise in the instant case when an order passed by the learned Special Court under NDPS Act granting bail to the similarly circumstanced co-accused is placed before us, more particularly, upon examining the reasons and the findings recorded therein.

Admittedly, the petitioner was apprehended having possessed the commercial quantity of contraband. The bail application being CRM 4619 of 2020 filed by the petitioner was dismissed on 11th February 2021 by the Division Bench to which one of us (Harish Tandon, J.) was the constituent of the said Bench. Subsequent to the rejection of the said bail application, the petitioner along with other co-accused moved the learned Special Judge under NDPS Act

with a prayer to release the petitioner on bail.

Ordinarily, once the High Court rejected the application for bail, the Court subordinating to it, even exercising the concurrent jurisdiction, should be slow and circumspect in passing the order diametrically opposite to what has been passed by the High Court. However, the thing does not arise in such situation as the petitioner could not move his application for bail filed before the Court below on the date when the said application along with other application filed by the co-accused was taken up for hearing. The application filed by the petitioner was dismissed but the application for bail filed by the other co-accused, who stand on the same footing that of the petitioner, was allowed on the findings to which we do not intend to lay hand to it. Subsequently, the other application filed by the other co-accused was allowed in tune with the order passed in connection with the application for bail filed by the earlier co-accused, who have been granted bail and the same was also allowed in the similar fashion. After such event, the petitioner has filed the instant application under changed circumstances.

The first and foremost point, which is urged by the learned Advocate for the petitioner that the other co-accused, who stood on the same footing that of the petitioner, have been enlarged on bail by the learned Special Judge under NDPS Act and, therefore, the petitioner should not be discriminated. It is further submitted that the application for bail filed by the petitioner before the said learned Special Judge was dismissed simplicitor on the ground of default in appearance and not on merit.

On the score of the facts adumbrated herein above, we do not find any statutory embargo in entertaining the application renewing the prayer for bail once rejected at an earlier point of time. Obviously, the Court will consider the said application upon the new facts germane between the period from rejection of the first application and filing of the second and if the circumstances have changed considerably enuring to the benefit of the petitioner, there is no fetter on the part of the Court to consider the said application under changed circumstances.

As indicated above, between the period of rejection of the first application and filing of the present one, there has been a considerable change occurred as two of the similarly circumstanced co-accused have been enlarged on bail by the learned Special Judge under NDPS Act.

Though it is submitted by Mr. Sanjay Bardhan, learned Advocate for the State, that steps are being taken by the prosecution against those orders yet no such application has been filed as of this time nor the order has been set aside by the Higher Forum. The prosecution cannot take a shelter that since they intended to assail the said order before the Higher Forum, the efficacy and binding effect of the same get erased and/or wiped out. It is trite law that the order remains binding between the parties unless set aside by the Higher Forum or in a proceeding recognized under the law. So long the order stands, the parties thereto cannot wriggle out therefrom irrespective of the consequence that would flow therefrom.

Similarly circumstanced persons have been enlarged on bail,

therefore, we do not find any justification in the stand of the prosecution side that the petitioner cannot be treated in a similar fashion without indicating the materials, which separate the petitioner from the said co-accused. If all the co-accused stand on the same footing he has to be treated equally as the constitutional reason one can visualize is that the quality must be amongst the equals and not amongst the unequal.

In absence of any special materials produced before us separating the petitioner from the other co-accused, we do not find any justification in rejecting the application for bail filed by the petitioner.

Accordingly, the petitioner shall be released on bail upon furnishing a bond of Rs.40,000 /- (Rupees Forty Thousand), with two sureties of Rs. 20,000/- each of whom once must be local having landed property along with ROR (LR) subject to the satisfaction of the learned Chief Metropolitan Magistrate, Calcutta with condition that he will not leave the jurisdiction of the concerned Court below without permission and shall intimate his address to the Officer in-Charge, STF Police Station with further direction to meet the Officer in-Charge of the said Police Station twice in a week until further order.

The application for bail, being CRM 3806 of 2021, is thus **allowed.**

Before parting, we noticed the findings recorded by the learned Special Judge under NDPS Act while granting bail to similarly circumstanced co-accused. We find that the law, which appears to

have been applied by the said learned Special Judge, cannot be concurred with.

Since the said Judicial Officer has attended superannuation, we, thus, direct the learned Registrar (Judicial Service) to take appropriate steps, as permissible under the relevant Rules, against the said Judicial Officer.

Let this order be communicated to the learned Registrar (Judicial Service) immediately.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)