

10.09.2021
TN/ct 32
sl no. 19

CRM 4366 of 2021

In Re : An application for bail under Section 439 of the Code of Criminal Procedure filed on 21.06.2021 in connection with Lalgola Police Station Case No.33 of 2018, dated 10.01.2018, under Sections 21(C)/29 of the NDPS Act, 1985 (corresponding to NDPS Case No.12 of 2018).

And

In Re : Akbar Ali

..... petitioner

Md. Sabir Ahmed,
Mr. Ali Hasan Alanyir

..... for the petitioner

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta

..... for the State

Learned counsel for the petitioner submits that the *prima facie* presumption under Section 37 of the NDPS Act cannot be said to have been raised in the present case, in view of both the independent witnesses to the seizure list having subsequently adduced evidence in trial, denying their presence at the moment of alleged apprehension.

It is further submitted, by placing reliance on the specific language of Section 37 of the NDPS Act, that such presumption, if not *prima facie* raised, shifts the burden of proof on the prosecution.

Learned counsel appearing for the State controverts such submissions and contends that the proceeding is already at the stage of trial and the subject-matter of challenge in the present bail application is in effect *sub judice* before the trial court.

Upon considering the submissions of the parties, it is evident that it cannot be said in the present case that the presumption under Section 37 of the NDPS Act did not arise.

In the present case, there was, at least apparently, due compliance with the statutory requirements since the petitioner was apprehended while in possession of the contraband articles and the seizure list was duly signed by witnesses. As such, in view of the subsequent lacunae in the prosecution case alleged by the petitioner, such *prima facie* presumption cannot be retrospectively dislodged. Since the petitioner has every right to rebut such presumption in trial, it would be prudent to leave the matter to the decision of the Trial Judge.

Accordingly, we are not inclined to grant bail. CRM 4366 of 2021 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Ananda Kumar Mukherjee, J.)