

24.08.2021

Court No.28
Item No.11
(Rejected)

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As

CRM 4240 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with NDPS Case No. 24 of 2020 arising out of Memari Police Station Case No. 416 of 2020 dated 12.09.2020 under Section 20(b)(ii)(C)/29 of the Narcotic Drugs and Psychotropic Substances Act;

And

In the matter of : **Ramprasad Patra**

...Petitioner

**Mr. Rachit Lakhmani,
Mr. Mohammed Amin,
Ms. Uzma Masood,
Mr. Ghulam Muztaba,
Ms. Vandana Nathany.**

...For the Petitioner

**Mr. Sudip Ghosh,
Mr. Bitasok Banerjee,
Mr. A. K. Datta.**

...For the State.

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 is in custody for nearly 347 days in connection with the aforementioned case and applied for bail on the premise that the case made out by the prosecution is improbable and unbelievable. It is submitted that though the commercial quantity of contraband (Ganja) is shown to have been recovered from the exclusive possession of the petitioner, but because of the less density it carries, it cannot be carried on a motorcycle, as it requires a huge space. It is further submitted that some of the co-accused had been enlarged on bail and, therefore, the petitioner standing on the same footing should also be considered in a similar fashion.

The State opposes the prayer for bail. It is submitted that commercial quantity of contraband, i.e. 25 Kgs. of Ganja was recovered from the exclusive possession of the petitioner and, therefore, he does not stand on the same footing with that of the other co-accused. It is further submitted that the other co-accused who have been enlarged on bail were apprehended subsequent to the

seizure made, when the petitioner was found carrying the contraband and those were of intermediate quantity. It is submitted that the supplementary charge sheet has already been filed after obtaining the report from the forensic science laboratory, but the learned Advocate for the State is unable to apprise the Court whether charges have been framed or not.

After hearing the respective Counsels and upon perusal of the materials available from the record, prima facie, the petitioner was found to have possessed above the commercial quantity of contraband (Ganja) and, therefore, the rigor of Section 37 of the N.D.P.S. Act is immediately attracted.

It is beyond the cavil of doubt that the provisions under Section 37 of the N.D.P.S. Act is not an absolute bar, but the conditions enshrined therein is required to be adhered to before the Court embarks its journey on an application for bail. Section 54 of the Act raises presumption against the accused the moment contraband is found from his possession and such presumption is rebuttable in nature.

Since the presumption has been raised and the matter is pending before the Special Judge at the stage of framing of charges, we do not find from the facts narrated hereinabove that the petitioner has been able to make out a case taking exception to Section 37 of the N.D.P.S. Act.

The prayer for bail is thus rejected.

However, we request the learned Special Judge under N.D.P.S. Act to take up the matter for the purpose of framing of charges and shall thereafter expedite the trial of the case.

It goes without saying that the prosecution would supply all the documents annexed with the supplementary charge sheet to the petitioner on the next date so fixed

The application for bail, being CRM 4240 of 2021, is thus **dismissed.**

(Harish Tandon, J)

(Md. Nizamuddin, J.)

