

22.09.2021

Court No.28
Item No.42
(REJECTED)

Ab

CRM 4480 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed on 25.06.2021 in connection with Tapan Police Station Case No. 246 of 2018 dated 02.10.2018 under Sections 21(c)/22(c)/23(c)/27(A)/29 of the Narcotic Drugs and Psychotropic Substances Act (Special Case No. 50 of 2018);

And

In the matter of : **Samir Das @ Sameer Das.**

...Petitioner.

Mr. Achut Basu,
Ms. Punam Basu,
Ms. Sonam Basu,
Mr. Srikumar Chakraborty.

...For the Petitioner

Mr. Neguive Ahmed,
Ms. Trina Saha.

... 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 has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with Tapan Police Station Case No. 246 of 2018 dated 02.10.2018 under Sections 21(c)/22(c)/23(c)/27(A)/29 of the Narcotic Drugs and Psychotropic Substances Act.

Learned Advocate for the petitioner submits that the petitioner stands on a same footing that of the another co accused, namely, Liton Mohanta, who had already been enlarged on bail in connection with the aforesaid case on 5th July 2019 by this Court in CRM 4807 of 2019 and the moment he has been enlarged on bail, the present

petitioner should also be enlarged on bail on the ground of parity.

The State opposes the prayer for bail. It is submitted that the commercial quantity of contraband was recovered from the vehicle of which the petitioner is one of the owners.

After hearing the respective parties and on perusal of the materials on record, it appears that 5000 bottles of phensedyl were recovered from the vehicle of which the petitioner is one of the owners. The claim of the petitioner that the similarly circumstanced co-accused has already been enlarged on bail by this Court on 5th July 2019, which appears to be misplaced for the simple reason, had the petitioner stand on the same footing that of the said co accused, the aforesaid plea could have been taken in his earlier application filed before this Court being CRM 5734 of 2020, which was rejected on 26th August 2020 much after the alleged aforesaid incident. There is a categorical finding recorded by this Court that the petitioner being the owner of the vehicle was apprehended with the contraband above the commercial quantity kept in the vehicle, the embargo created under Section 37 of the Narcotic Drugs and Psychotropic Substances Act clearly applies. There is no case made out to take an exception to Section 37 of the Narcotic Drugs and Psychotropic Substances Act.

The moment the contraband above the commercial quantity was recovered from the joint possession of the petitioner, we do not find that the petitioner stand on a same footing that of Liton Mohanta, who has already been enlarged on bail.

The application for bail being CRM 4480 of 2021 is **rejected**.

It is informed by the petitioner that after the framing of

charges, the ball has rolled to the stage of trial and, in fact, some of the witnesses have been examined.

In view of the above, we request the learned Judge, Special Court under NDPS Act to expedite the trial of the case

(Harish Tandon, J)

(Bibek Chaudhuri,J.)