

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.M. 5032 of 2021

Sonu Ansari @ Jamshed Ansri.

-Vs-

State of West Bengal

For the Petitioner : Mr. Dev Kumar Sharma, Advocate

For the State : Mr. Ranabir Roychowdhury, Advocate
Mr. Rudradipta Nandi, Advocate

Heard on : 30.09.2021

Judgment on: 07.10.2021

Ananda Kumar Mukherjee, J. :-

1. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner in connection with Jagacha Police Station Case No. 108 of 2018 dated 15.07.2018, under Section 20(b)(ii)(B)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985,

now pending before the Learned Judge, Special Court under the N.D.P.S. Act, at Howrah.

2. Learned Advocate appearing for the petitioner has submitted that the petitioner has been levelled falsely implicated in this case. The allegations that have been against him are in the abstract and since the petitioner is under long detention without any progress in the trial, by this petition he has renewed his prayer for bail for the fourth time before this Court.
3. The fact of the case as it would appear from the bail petition is that on the basis of source information 25 kg. 100 grams of ganja was allegedly seized from the possession of the petitioner while 30 kg. 210 grams was seized from accused Md. Shahid @ Vicky and 10 kg 200 grams from the accused Md. Chand, amounting to a total of 65 kg 610 grams of ganja, which is commercial quantity and that the petitioner used to sell such contraband substance to customers.
4. Charge has been framed by the Trial Court of 07.01.2019 and during trial, which commenced on 16.01.2019 only three witnesses have been examined in

full and one examined in part. It has been submitted by Mr. Sharma that the earlier application for bail of the petitioner in CRM 3745 of 2019 was dismissed by this court on 24.04.2019, the second application being CRM 3472 of 2020 along with CRAN 1777 of 2020 was rejected as not pressed and the third bail application for the petitioner being CRM 6617 of 2020 was rejected on 16.09.2020. It has been brought to the notice of this court that by the order dated 16.09.2020 passed in CRM 6617 of 2020 the Court had directed the Trial Court to commence the trial either virtually or physically within a fortnight from the date of communication of the order and to conclude the trial preferably within six months from the date of order. It has been submitted that the order was communicated to the Trial Court on 13.10.2020 but trial has not been concluded till date. Learned Advocate for the petitioner has further submitted that the petitioner is in custody since 16.07.2018 and he should be released on bail on any condition. In support of his case learned Advocate for the petitioner has relied upon a decision of the Hon'ble Supreme Court of India in the case of **Chitta**

Biswas @ Subhas vs The State of West Bengal (Criminal Appeal No. 245 of 2020) and another decision of a co-ordinate bench of this Court passed in CRM No. 3720 of 2021 in Re Sanjib Roy had urged that in both the cases the petitioners were granted bail by taking into account their long detention.

5. Mr. Roy Chowdhury, Learned Advocate for the State has opposed the prayer for bail and strongly contented that on consecutive occasion the prayer for bail of the petitioner has been rejected by co-ordinate benches of this Court. He has argued that a large haul of ganja/ cannabis has been seized from the possession of the petitioner as well as his accomplices and the petitioner has failed to rebut the presumption raised against him under section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He has submitted that due to a prevailing pandemic situation, some delay occurred in the trail of the case. Trial is in progress. Delay if any was beyond control of the prosecution.
6. In support of his submissions learned Advocate for the State has placed reliance upon two decisions of the

Hon'ble Supreme Court of India reported in **(2009) 1 SCC (Cri) 831 (Union of India vs. Rattan Mallik @ Habul) and 2020 (12) SCC 122 (State of Kerala etc. vs. Rajesh Etc.)**, wherein the Hon'ble Supreme Court laid emphasis upon compliance of the mandatory provisions of Section 37 of the N.D.P.S. Act before enlarging a person on bail who has been charged with such offence.

7. Having considered the facts and circumstances of the case and the rival submissions advanced by Learned Advocates for the parties, it appears to us that the only change in circumstances since rejection of the earlier application for bail is delay in conclusion of trial and a longer period of detention of the petitioner. We have taken notice of the fact that the maximum punishment for the offence, with which the petitioner has been charged under Section 20(b)(ii) of the N.D.P.S. Act is ten years of imprisonment. It appears to us that the petitioner is in custody since 16.07.2018, which is less than half of the maximum period of sentence provided for the offence. Therefore, the petitioner cannot avail the benefit of bail according to the provisions of Section 436 A of the Code of

Criminal Procedure, 1973 on the ground of his detention. Furthermore, Section 37 (1)(b) of N.D.P.S. Act has an overriding effect on the provisions of the Code of Criminal Procedure.

8. On an earlier occasion an order was passed by this Court in CRM 6617 of 2020 with CRAN 1 of 2020 dated 16.09.2020, wherein the Trial Court was directed to commence the trial and conclude the same preferably within six months from the date of order. Learned Advocate for the petitioner has harped upon the non conclusion of the trial within the specified period to press the prayer for bail. The case is pending before the learned Judge Special Court (for Narcotic Drugs and Psychotropic Substances Act, 1985) Howrah, being Trial No. 8 of 2018. It was fixed on 18.06.2021 for production of accused and evidence. The copy of order dated 18.06.2021 of the Trial Court placed before us shows on that date the accused was not produced from the Correctional Home and none of the advocates appeared before the court as per resolution of the local Bar Association. Due to such situation, the hearing was adjourned and fixed on 09.08.2021 for

evidence. It is clear from that order that delay in trial was caused due to non participation of the members of the Bar Association which included the learned Advocate for the petitioner. Therefore, the jurisdictional court cannot be held responsible for the circumstances which prevented it from concluding the trial. We are not unmindful of the fact that in a trial, presence of the witness and the advocates are necessary but the pandemic has caused deterrence to such activity by default.

9. In the case of **Chitta Biswas @ Subhas** relied upon by the petitioner, a Co-ordinate bench of this court by order dated 30.07.2019 passed in CRM no. 6787 of 2019 has rejected the prayer for bail of the petitioner due to his prima facie involvement in alleged joint possession of commercial quantity of codeine mixture from the petitioner and the co-accused person in view of the statutory restrictions under section 37 of the N.D.P.S. Act. The learned advocate led us through the decision in **Chitta Biswas @ Subhas vs State of West Bengal** (Criminal Appeal No. 245 of 2020), which steamed out from the decision of this court passed in CRM no. 6787 of 2019.

The Hon'ble Supreme Court while considering the said Appeal, granted bail to the petitioner therein without expressing any opinion on the merits or demerits of the rival submissions and on the facts and circumstances on record.

10. In support of the petitioner's case, learned advocate has also relied upon another decision of the co-ordinate bench of this court passed in CRM no. 3720 of 2021 dated 02.06.2020 In Re: Sanjib Roy, where in a case under section 21(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the court relying upon the decision of the ***Hon'ble Supreme Court of India and Hussainara Khatoon- Vs.- State of Bihar, Patna, reported in 1980 1 SCC 81*** and ***Abdul Rehman Antulay & Ors. – Vs- R. S. Nayak & Anr., 1992 1 SCC 225*** and the order passed by the Hon'ble Supreme Court in Re: Contagion of Covid-19 Virus in prisons and the judgment delivered in the case of Shaheen Welfare Association –Vs- Union of India & Ors, reported in (1996) 2 SCC 616] granted bail to the petitioner.

11. We have considered the facts and circumstance of the case as well as the decision relied upon by the petitioner and the State of West Bengal. The jurisdiction of the court to grant bail in a case involving seizure of commercial quantity of contraband substance under the N.D.P.S. Act is circumscribed by the provisions of section 37 of the N.D.P.S. Act which mandates as follows:

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) Every offence punishable under this Act shall be cognizable;

(b) No person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitation under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail”.

12. The pre-requisite for granting of bail in a case involving commercial quantity of contraband substance is that the court is to be satisfied about the existence of reasonable grounds for believing that the petitioner is not guilty of any such offence and that he is not likely to commit any offence while on bail. The prima facie case of seizure of commercial quantity of ganja from the possession of the petitioner and co-accused does not raised any presumption in favour of the petitioner to dislodge the rigour under section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act. This legislative mandate is required to be adhered to in order to effectively control and curb any nefarious activity of trafficking and smuggling of Narcotic Drugs and Psychotropic substances.
13. **State of Kerala Etc. Vs. Rajesh Etc (2020)(12) SCC 122**, relates to a Appeal prefered before the Supreme

Court challenging the discretion exercised by the Learned Single Judge of the High Court of Kerala in granting post arrest bail to the accused respondent without noticing the mandate of section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act. The Hon'ble Supreme Court on Appeal was pleased to set aside the order passed by the High Court releasing the respondent on bail and observed,

“The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case where there are reasonable grounds for believing that the accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed”.

14. In another decision, **Union of India vs. Rattan Mallik @ Habul (2009)(1)SCC(Cri) 831** Hon'ble Supreme Court considered an Appeal challenging the order passed by the High Court of judicature at Allahabad which suspended the sentence awarded by the Trial Court in a case under sections 8/27A and 8/29 of the N.D.P.S. Act and granted bail to the convict. In that case the Hon'ble

Supreme Court referring to the mandate of section 37 of the N.D.P.S Act directed that the order cannot be sustained without compliance of the same and remitted the matter to the High Court for fresh consideration.

15. While dealing with such prayer for bail we have observed the mandate and parameters laid down in section 37 of the N.D.P.S. Act. The test propounded in the decision reported in **(2009) 1 SCC (Cri) 831 (Rattan Mallik @ Habul)** and in the case of **State of Kerala Etc. vs. Rajesh Etc. (2020) (12) SCC (122)** observed that the provisions laid down in section 37 of the Narcotic Drugs and Psychotropic Substances Act are mandatory and we are cognizant of the same. In view of the aforesaid facts and circumstances of the case and the nature and gravity of the alleged offence involving seizure of commercial quantity of ganja from the possession of the petitioner and co-accused person, we are unable to persuade ourselves to enlarge the petitioner on bail on the sole ground of the period of detention. We find no substance in the arguments advanced by learned Advocate for the petitioner and his prayer for bail stands rejected.

16. With the aforesaid observation the application for bail being CRM No. 5032 of 2021, is disposed of.
17. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

[ANANDA KUMAR MUKHERJEE, J.]

I Agree.

[DEBANGSU BASAK, J.]