

C.R.M. 5068 of 2021

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Special Case No. 20 of 2019** arising out of the **NCB Crime No.11/NCB/KOL/2019** dated **05/07/2019** under Sections **17/18/27A/28/29** of the Narcotic Drugs & Psychotropic Substances Act.

And

In the matter of: - Birbal Kumar

....petitioner.

Mr. Manjit Singh,
Mr. Gaganjyoti Singh,
Mr. Biswajit Mal.

...for the petitioner.

Mr. Y. J. Dastoor,
Mr. Phiroze Edulji,
Mr. Sagar Saha

...for the NCB.

The petitioner has filed the instant application for bail in connection with Special Case No. 20 of 2019 arising out of the NCB Crime No.11/NCB/KOL/2019 dated 05/07/2019 under Sections 17/18/27A/28/29 of the Narcotic Drugs & Psychotropic Substances Act.

The learned advocate appearing on behalf of the petitioner submits that the petitioner is a driver having employed two months before the alleged incident and while driving the car the Special Team intercepted and commercial quantity of contraband was recovered from the cavity of the car. It is further submitted that the son of the owner of the car was also commuting in the said car and, therefore, the principle of conscious possession cannot be attributed to the driver.

The learned Additional Solicitor General appearing for the NCB submits that commercial quantity of contraband was recovered from the cavity of the car and the petitioner had the

knowledge of such contraband having therein and therefore the possession can be presumed. It is further submitted that the rigor of Section 37 of the Narcotic Drugs & Psychotropic Substances Act is attracted in this case.

After hearing the learned counsels and considering the materials on record, we find that after filing of the charge-sheet the petitioner has filed an application for discharge which delayed the framing of charges as the said application is required to be disposed of first. According to the learned advocate for the petitioner, the said application was filed in the month of April, 2021 and despite efforts having made to get it disposed of, till date there is no progress since thereupon.

Be that as it may, our attention is drawn to the fact that the last date was fixed in the month of September, 2021 for hearing of the said application for discharge. Since the rigor of Section 37 is attracted and the plea projected by the petitioner is a matter of trial, we do not find any justification in enlarging the petitioner on bail.

As such, the prayer for bail is rejected.

Accordingly, the application for bail is dismissed.

However, we request the learned Special Judge, 3rd Court under Narcotic Drugs & Psychotropic Substances Act, Purba Barddhaman to prepone the date of hearing of the said application in presence of the counsels which shall not exceed one month from the communication of this order and endeavour shall be shown to dispose of the same within fortnight therefrom in accordance with law. Nothing observed in this order shall have

any persuasive effect on the merit of the said application as this Court has no occasion to go into it.

(Rabindranath Samanta, J.)

(Harish Tandon, J.)