

17.11.2021

CRM 5136 of 2021

Court No.28
Item No.56
(ALLOWED)

Ab

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed on 02.08.2021 in connection with Suti Police Station Case No. 368 of 2020 dated 06.08.2020 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Case No. 183 of 2020);

And

In the matter of : **Mojibur Rahaman @ Rongbir Seikh @ Mohibur Rahaman @ Bapi.**

...Petitioner

Mr. Soumya Basu Roy Chowdhury.

...For the Petitioner.

**Mr. Sanjay Bardhan,
Ms. Manisha Sharma.**

... 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 Suti Police Station Case No. 368 of 2020 dated 06.08.2020 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act.

This is a second round of litigation before this Court at the behest of the petitioner. The application for bail filed by the petitioner being CRM 1946 of 2021 was rejected on 1st June 2021 by the Co-ordinate Bench based upon the following findings:

“Learned counsel for the State adverts our attention to the statement of co-villagers appearing at page 50, 51, 126 and 127 and the statement of the co-accused of the Case Diary at page 5, 48, 54 and that of the petitioner at page 77 so recorded and other materials placed in Case Diary which inspires confidence of this Court that *pima facie*, the petitioner is well

involved and linked with the instant case.”

Indubitably, the petitioner has been apprehended in connection with the aforesaid case solely on the basis of the statement of the co-accused, although there was no recovery of contraband from his exclusive possession. The Co-ordinate Bench accepted the proposition of law that the statement under Section 67 of the Narcotic Drugs and Psychotropic Substances Act is equated with the statement under Section 161 of the Code of Criminal Procedure and does not partake a character of the statement under Section 164 of the Code of Criminal Procedure. It is further recorded that such statement cannot made foundation for conviction in absence of any supporting evidence establishing the link of the petitioner in dealing with the contraband. Despite having held so, the prayer for bail was rejected on the observation quoted herein above, as the Co-ordinate Bench found the statements of the co-villagers to be reliable and establishing a chain of the commission of offence under the Narcotic Drugs and Psychotropic Substances Act.

Since the learned Advocate for the petitioner raises a plea that such findings are not based on the materials surfaced from the case diary and are perverse, we embark the journey on assimilating the fact from the case diary, more particularly, the pages referred by the earlier Co-ordinate Bench while arriving at an ultimate conclusion.

Learned Advocate for the State candidly submits that the statements of the co-villagers appearing at page 50 and 51 do not relate to the present petitioner, but the statements of the co-villagers appearing at page 126 and 127 directly implicate the petitioner and,

therefore, such findings cannot be regarded as perverse.

For such limited purpose, more particularly, in order to ascertain whether such findings are perverse, we peruse the statements of the co-villagers appearing at page 126 and 127 of the case diary. Our meaningful reading of such statements leaves no ambiguity that those witnesses had not given a direct evidence pertaining to the involvement of the petitioner as a racketeers in dealing with the contraband. What has been surfaced therefrom that those witnesses have heard from the other villagers without naming them that the petitioner is involved in dealing with the contraband. Such statement, in our view, does not conclusively establish the link at this stage unless such witnesses while standing in the witness box improve upon and corroborate the fact by convincing evidence. Merely a bare statement of villager, who had no direct knowledge of involvement of petitioner, cannot be taken to be sacrosanct at this stage in establishing the link, which, in our opinion, is one of the paramount consideration in a case where the contraband was not recovered from the possession of the accused.

There is no fetter on our part to take an independent view if the findings appear to be not supported by the materials or record or otherwise, though judicial discipline demands the uniformity in the decision and the respect to the findings returned by the earlier Co-ordinate Bench.

Since our endeavour has failed to find out any corroborative evidence establishing the link with the petitioner, we are pained to take a different view than what has been taken by the earlier Co-

ordinate Bench.

As indicated above, the statements of the co-villagers are not admissible at this stage being hearsay, we, therefore, intend to allow the prayer for bail of the petitioner. Furthermore, since the recovery of contraband above the commercial quantity was not made from the petitioner, the rigor of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is not attracted.

Accordingly, the petitioner shall be released on bail upon furnishing a bond of Rs.10,000 /- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under Narcotic Drugs and Psychotropic Substances Act, Berhampore, Murshidabad, subject to the condition that the petitioner shall appear before the Trial Court on every date of hearing until further orders.

In the event the petitioner fails to do so without any justifiable cause, the Trial Court shall be at liberty to pass necessary order in accordance with law without any further reference to this Court.

The application for bail, being CRM 5136 of 2021, is thus **allowed.**

(Harish Tandon, J)

(Rabindranath Samanta, J.)