

16.12.2021
Court No.32
Item No. 04
Krishnendu
Bail Granted

**C.R.M.5799 of 2021
(Via Video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In re : **Sukesh Mondal @ Budesh**

Petitioner

Mr. Debarshi Brahma
Mr. Sagnik Mukherjee
Ms. Ankita Das Chakraborty

For the Petitioner

Mr. S.G. Mukherjee, Ld. P.P.
Mr. Sujan Chatterjee

For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Hogolberia P.S. Case No. 116 of 2020 dated 27.08.2020 under sections 21(c)/29 of the N.D.P.S. Act.

Mr. Brahma, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated in the present case. In the memo of arrest the petitioner was shown to have been arrested on 27th August, 2020 at 22.26 hours but in the said memo, the column no. 10 [*Signature of the witness (either a member of family or a respectable person of the locality)*] was blank. Absence of any signature in column no. 10, gives rise to a reasonable apprehension that the arrest of the petitioner may not have occurred in the manner as alleged by the prosecution. Signature on the arrest memo by a relation or a respectable member of the locality is a requirement which stems from the

mandate of the Hon'ble Apex Court in the case of *D.K. Basu –Vs- State of West Bengal*, reported in *AIR 1997 SC 610*.

He further submits that as there was no independent witness to the alleged recovery, a Co-ordinate Bench of this Court was pleased to grant bail in spite of the statutory restrictions. A copy of the said order dated 21st January, 2019, as placed, be kept on record.

Mr. Mukherjee, learned Public Prosecutor appearing for the State, opposes the petitioner's prayer and submits that the rigours of section 37 of the N.D.P.S. Act are clearly attracted since contraband substance, above commercial quantity, was recovered from the possession of the petitioner. Answering to a query of this Court, Mr. Mukherjee informs that upon completion of investigation, charge sheet has already been submitted. Let the report of the Sub Inspector of Police, Hogolberia P.S., as produced, be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

It appears that the arrest and seizure was made at the same place and almost at the same time but it is surprising to note that there was no independent witness in the arrest memo as well as in the seizure list. In the backdrop of such sequence, we are of the opinion that the petitioner has been able to rebut the statutory restrictions under section 37 of the N.D.P.S. Act. *Prima facie*, the petitioner has been able to demonstrate with reasonable certainty that he is not guilty of the offence and is not likely to commit any offence, while on bail.

Under such circumstances, further detention of the petitioner, who is in custody for 450 days, is not warranted, more so when

upon completion of investigation, charge sheet has been submitted.

Accordingly, we allow this application and direct that the petitioner, namely, **Sukesh Mondal @ Budesh**, shall be released on bail upon furnishing a bond of ₹10,000/- with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Judge, Special Court under N.D.P.S. Act, Krishnagar, Nadia, on condition that the petitioner shall not leave the jurisdiction of Hogalberia Police Station, save and except for attending the learned trial court on all the dates, as specified for hearing.

The petitioner shall also meet with the Officer-in-Charge of Hogalberia Police Station once a fortnight until further orders.

It is further directed that the petitioner shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No.5799 of 2021, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Sugato Majumdar, J)

(Tapabrata Chakraborty, J)