

08.12.2021

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rejected

C.R.M. 5858 of 2021
(via video conferencing)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Swarupnagar Police Station Case No. 952 of 2019 dated 07.11.2019 under Section 21(c) of the NDPS Act.

And

In Re : Subrata Biswas @ Subra Biswas petitioner

Mr. Avik Ghatak
Mr. Saibal Kumar Dasgupta
... for the petitioner

Mr. T. D. Nandy
Mr. Antarikhya Basu
... for the State

Learned Counsel appearing for the petitioner submits that the petitioner is in custody for two years. He further submits that drawing of samples from the place of occurrence is in violation of Section 52-A of the NDPS Act as enunciated by the Hon'ble Apex Court in Mohonlal vs. Union of India.¹

Learned Counsel appearing for the State opposes prayer for bail and submits that 5.5 liters of codeine mixture was recovered from the possession of the petitioner.

We have considered the materials on record. Statements of witnesses including contemporaneous documents i.e. seizure memo. show recovery of narcotic substance above commercial quantity from the possession of the petitioner. Seizure of the contraband is prima facie established irregularity in drawing of

¹ 2016(3)SCC379

samples at the spot purportedly in violation of Section 52-A of the NDPS Act requires to be assessed on the avert of prejudice in the light of other evidence on record during trial. Ratio in Mohonlal (supra) is to be applied after entire evidence has come on record and not at this stage which may lead to pre-judging the issue.

In view of the aforesaid facts and the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

The application for bail is, thus, rejected.

We request the trial court to expedite the trial and conclude at an early date preferably within a period of one year from the next date fixed for recording of evidence without granting any unnecessary adjournment to either of the parties.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

C.R.M. 192 of 2018

In Re.: An application under Section 439 of the Code of Criminal Procedure filed on 05.01.2018 in connection with Karimpur Police Station Case No. 136 of 2012 dated 03.07.2012 under Sections 420/467/468/471/120B of the Indian Penal Code.

And

In Re : Rabish Kumar Upadhyay petitioner

Mr. Asraf Ali

... for the petitioner

Mr. Debojyoti Deb

... for the State

Having considered the materials on record prima facie disclosing involvement of the petitioner in the alleged crime of misappropriation of monies of the innocent depositors and the fact that the petitioner has absconded for a protracted period of time, we are not inclined to grant bail to the petitioner at this stage.

The application for bail is, thus, rejected.

(Rajarshi Bharadwaj, J.)

(Joymalya Bagchi, J.)

