

29.10.2021
Court No.8
Item No.8
AP/ss
(Dismissed)

C.R.M. 5965 of 2021
(Through Video Conference)

In the matter of : An application for bail under section 439 of the Code of Criminal Procedure in connection with Gopalnagar P.S. Case No.389 of 2021 dated 15.07.2021 under sections 21(c) of the Narcotic Drugs and Psychotropic Substances Act

And

In the matter of : Murari Sardar

Mr. Rajdeep Mazumdar,
Mr. Pritam Roy,
Ms. Arushi Rathore

... .. for the petitioner

Mr. Sanjoy Bardhan,
Ms. Baishakhi Chatterjee

... .. for the State

Learned counsel for the petitioner contends that the presumption under Section 37 of the NDPS Act does not apply at all in the present case in view of the failure of the respondent authorities to make out any prima facie credible case against the petitioner. It is further contended that there is no signature of any independent witness either in the memo of arrest and/or the seizure list, which prima facie vitiates the case of the police authorities against the petitioner.

It is further submitted that the police allegedly acted on the information supplied by two of the co-accused, who were already in custody for some time. As such, mere statements of the co-accused, that too given while in police

custody, as is well settled, cannot be relied on for the purpose of incriminating the present petitioner.

It is further contended, by placing reliance on a coordinate Bench judgement of this Court passed in CRM 5708 of 2018 as well as a coordinate Bench judgment passed in CRM 6261 of 2019, that the alleged recovery not being witnessed by independent persons might vitiate the recovery itself. Learned counsel also places reliance on ***D.K. Basu Vs. State of West Bengal***, reported at ***AIR 1997 SC 610***, where it was specifically held by the Supreme Court that it is not an empty formality and the presence of such signature (on the arrest memo) gives a stamp of authenticity to the lawful apprehension of the accused at the place and time as stated therein. Absence of signature in the arrest memo of any respectful member of the locality, particularly when it is alleged that apprehension and recovery from the petitioner was at a public place in the presence of independent witnesses, gives rise to reasonable grounds that the arrest of the petitioner may not have occurred in the manner as alleged by the prosecution, lending credence to the petitioner's plea of prior arrest and wrongful detention.

Learned counsel appearing for the State, on the other hand, places reliance on an unreported judgment of the Delhi High Court wherein several decisions of the Supreme Court were considered. The crux of the ratio laid down in the said matters is that the mere absence of the

signature of an independent witness does not vitiate the entire proceeding and/or the memo of arrest as a whole.

It is further submitted by learned counsel for the State that the Supreme Court has clearly settled the law that the Court should not start with an initial distrust of the investigating agency.

Considering the materials in the case diary in respect of the instant case, we find that the signature of the accused Murari Sardar is there on the seizure list, although all the other witnesses were part of the police team which raided the petitioner's house. In the memo of arrest, above the dotted line assigned for signature of relative or any local person, it is clearly stated that such relatives/local persons refused to sign the said memo of arrest.

Although a primary doubt has been sought to be raised by the petitioner on the recovery of six liters of codeine mixture from the house of the petitioner, that too at the dead of night (between 12:00 midnight to 12:55 am), there is sufficient prima facie material to show that a commercial quantity of contraband was recovered from the house of the petitioner and the seizure list contains the signature of the petitioner as well. It is relevant to mention that the petitioner's signature finds place in two places of the memo of arrest as well, which proves his presence at the time of seizure. There is, as yet, nothing on record to show

that such signature was obtained by force by the police authorities.

All those considerations, in any event, are the subject-matter of trial when the same begins. It will be premature at this juncture to go into the merits of the veracity of the statements of either of the parties.

What is found from the records is that the signature of the petitioner finds place both in the seizure list as well as the memo of arrest, along with signatures of police officials. It is not entirely beyond the pale of credibility to assume that, at the unearthly hour when the contraband substance was recovered, no local witness and/or witness of the immediate neighborhood could be obtained for putting their signatures on the seizure list and/or memo of arrest. As such, it cannot be said, at least *prima facie* for the purpose of considering the grounds of bail, that the presumption under Section 37 of the NDPS Act has not arisen in the present case. In view of such presumption having arisen, it is a matter of trial as to the veracity of the contentions of the respective parties and it would be premature on our part to override the presumption of guilt cast under Section 37 of the NDPS Act and enlarge the petitioner on bail at this juncture.

Accordingly, CRM 5965 of 2021 is dismissed, thereby refusing the petitioner's prayer for bail.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Aniruddha Roy, J.)

(Sabyasachi Bhattacharyya, J.)