

10.12.2021
cm/ct 28

C.R.M. 6453 of 2021

sl no. 63 In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Belur P.S Case No. 161/2020 dated 04.09.2020 under Section 21 (C)/29 of the Narcotic Drugs & Psychotropic Substances Act.

And

Rejected

In Re : Md. Sahajada

..... petitioner

Mr. Arun Naskar

..... for the petitioner

Mr. Tapandeb Nandy

Mr. A. Basu

..... for the State

Petitioner is in custody for 416 days. Investigation is complete. It is submitted that the drawing of samples was not in compliance with Section 52A of the N.D.P.S. Act. Reference is ***Union of India vs. Mohanlal***¹.

Learned lawyer for the State opposes the prayer for bail and submits that narcotic substance is above commercial quantity i.e. 4.6 Ltr. codeine was seized from the possession of the petitioner. Statements of witnesses as well as contemporaneous document that is, seizure memo show recovery of narcotic substance above commercial quantity from the possession of the petitioner. Chemical examiner's report discloses the seized article is a narcotic substance. It is alleged samples were not drawn as per Section 52A of NDPS Act in presence of magistrate. In ***Mohanlal*** (supra) apex court held the aforesaid provision is mandatory. However, nothing is placed on record to show that the seized

¹ (2016) 3 SCC 379

contraband has been destroyed. In the event it appears to the trial court initial drawing of samples was in violation of Section 52A of NDPS Act, the trial court may ensure due compliance of requirements of Section 52A of the NDPS Act from the seized contraband. Thus, impact of alleged irregularity in the matter of drawing of samples as argued before us has to be tested on the anvil of attending facts and circumstances and other evidence on record in the course of trial.

However, in view of the prima face materials relating to seizure of the narcotic substance and the chemical examination report corroborating such fact, we are of the opinion in the aforesaid factual matrix and in light of the statutory restrictions 37 of the N.D.P.S. Act, this is not a fit case to grant bail to the petitioner.

The application for bail is thus **rejected**.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)