

23.09.2021
Serial no. 06
Dd

(Through Video Conference)

CRM 6125 of 2021

In re : An Application for **Bail** under Section **439** of the Code of Criminal Procedure filed on **7th September, 2021** in connection with **Jagacha** Police Station Case No. **154 of 2021** dated **26.06.2021** under **Section 21(C)** of the Narcotic Drugs and Psychotropic Substances Act.

-And-

In the matter of : Partha Sarathi Dey @ Partho @ Sanu
... ..Petitioner

Mr. Kallol Mondal,
Mr. Krishan Ray,
Ms. Amrita Chel,
Mr. Souvik Das,
Mr. Anamitra Banerjee, Advocates
... .. For the Petitioner

Mr. Sanjoy Bardhan,
Ms. Baishakhi Chatterjee, Advocates
... ..For the State

The petition is taken up for consideration subsequent to the order dated September 20, 2021.

Learned advocate appearing for the State produces the case diary in respect of Jagacha Police Station Case no. 129 of 2021 dated September 25, 2021 which was sought for by the order dated September 20, 2021.

We have perused the case diary of Jagacha Police Station Case no. 129 of 2021 dated September 25, 2021 in which the petitioner made a statement under Section 161 of the Criminal Procedure Code which led to the recovery in the present case.

We have perused the seizure list in the present case. The police claim to recover commercial quantity of codeine mixture from an abandoned place. The seizure list shows that the seizure was made on January 26, 2021 in between 12.15 and 2.05 AM. The seizure list also shows that the alleged seizure was not made in the presence of any independent witnesses. The persons who are said to witness the seizure are all police personnel.

Learned advocate appearing for the State justifies the seizure at late night on January 26, 2021 on the basis that the police in Jagacha Police Station Case no. 129 of 2021 date September 25, 2021 recorded the statement of the petitioner at late night on June 25, 2021 at about 9.25 P.M and, thereafter, the police party left at about 10.05 P.M. and arrived at the spot at about 11.25 P.M. to make seizure.

The seizure took place at an abandoned building place, Room no. 213 Press Quarters, Police Station Jagacha, Howrah, Ground Floor. As noted above, independent witnesses were not present. Absence of the independent witnesses is sought to be justified on the ground that it was a pandemic situation. Jagacha, by itself, is quite a populated area. The seizures occurred at a room on the ground floor. Absence of independent witness at the time of seizure and the location of the seizure are factors which we take into consideration.

Learned advocate appearing for the State submits that there are criminal antecedents of the petitioner. He submits that the petitioner was charged under the NDPS case in one police station case. There is a charge under Section 302 of the Indian Penal Code against the petitioner in another case.

He also submits that the investigation in the present case is at the initial stage.

Learned advocate appearing for the petitioner submits that the petitioner was acquitted in the earlier NDPS case. In Jagacha Police Station Case no. 129 of 2021 dated September 25, 2019 the petitioner obtained bail. The petitioner is now sought to be falsely implicated.

Considering that the police are yet to establish any dominion control of the petitioner over the abandoned building where the seizure was made and considering the fact that the petitioner was in police custody at the time when the seizure was made and considering the fact that the seizure was not witnessed by any independent witnesses, we are of the view that the petitioner is able to dispel the presumption under Section 37 of the NDPS Act. We are inclined to grant bail to the petitioner.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000- (Rupees Ten Thousand only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the Court of Learned Judge, Special Court under NDPS Act from Additional District and Sessions Judge, 3rd Court, Howrah, subject to condition that the petitioner shall appear before the learned trial court on every date of hearing until further orders and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever and on further condition that the petitioner will meet the Investigation Officer of the case once in a week and also that petitioner will not leave the jurisdiction of Howrah District without prior written intimation to the Investigation Officer.

In the event, the petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel the bail of the petitioner in accordance with law without further reference to this Court.

The prayer for bail is **allowed**.

CRM 6125 of 2021 is **disposed of**.

(Debangsu Basak, J.)

(Ananda Kumar Mukherjee, J.)