

23.09.2021
Serial no.14
Aloke
Ct. No.29

(Through Video Conference)

CRM 6213 of 2021

In re : An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 10.09.2021 in connection with Swarup Nagar Police Station FIR No. 1095 of 2019 dated 21.12.2019 under Sections 21(C) of the NDPS Act..

And

In the matter of : Samir Mondal

... ...Petitioner

Mr. Arindam Jana, Advocate
Mr. Bikram Banerjee, Advocate
Mr. Sudipta Dasgupta, Advocate
Mr. Arka Nandi, Advocate

... ... For the Petitioner

Mr. Sanjay Bardhan, Advocate
Mr. Palash Chandra Majhi, Advocate

... ...For the State

Petitioner seeks bail.

Learned Advocate appearing for the petitioner submits that although it is the prayer for renewal of the bail, there are change in circumstances requiring the Court to consider the prayer for bail. He draws the attention of the Court to the arrest memo and the seizure list as also the first information report. He submits that there are discrepancies in the arrest memo and the first information report. He highlights the fact that the police wrote different numbers of the GD entry in the first information report and in the arrest memo. He also highlights the fact that no near relative of the petitioner was present at the time of arrest. The arrest memo does not specify the presence of any near relative. He submits that in reality, the petitioner was arrested on December 20, 2019 from Bangaon and was shown to be arrested on December 21, 2019. He submits that the petitioner is in a precarious medical condition. He submits that given the medical condition of the petitioner and given the stage of the trial, it is unlikely that the trial will be over in the near future. He submits that in the barest minimum, Court should

direct expeditious trial considering the medical condition of the petitioner, if it is pleased not allow the prayer for bail.

Learned Advocate appearing for the petitioner relies upon **2018 Criminal Law Journal 4098 (Cal)** in the case of **Ansar Ali** and submits that signature of witnesses on the arrest memo is not an empty formality.

In the facts of the present case, there is no signature of the relative or of any local person in the arrest memo. He relies upon **2019 SCC online SC 942 (Vijay Pandey vs. State of U.P.)** and submits that the absence of independent witness at the time of seizure is one of the grounds on which, the petitioner can justify his claim to rebut the presumption under Section 37 of the NDPS Act. He contends that the petitioner was falsely implicated in the police case and, therefore, should be granted bail.

Learned Advocate appearing for the State submits that commercial quantity of codin mixture was seized from the possession of the petitioner. The seizure was late at night, therefore, the police could not obtain any independent witness. He submits that mere absence of independent witness does not vitiate the seizure or absolves the petitioner.

This is the second application for grant of bail by the petitioner. The earlier application was rejected by a Coordinate Bench on January 28, 2021. There is a forensic laboratory report submitted by the police before the jurisdictional Court establishing that the contraband seized from the possession of the petitioner is codin mixture. The petitioner seeking bail in a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 is required to dispel the presumption under Section 37 of the NDPS Act when the contraband seized is of commercial quantity. In the facts of the present case, the contraband seized of commercial quantity.

Considering the materials in the case diary and considering the fact that the prior application for grant of bail was rejected by a Coordinate Bench on January 28, 2021, we find that there is hardly any change of circumstances warranting grant of bail to the petitioner.

Vijay Pandey (Supra) is a judgment on appeal from the conviction of sentence under the Act of 1985. It was on appreciation of the evidence that the Court returned the finding as noted therein.

In the present case, the trial is yet to commence.

In Ansar Ali (supra) the Court took into consideration various aspects of the case including the seizure list, labels, memo of arrest and found gross inconsistencies and/or contradiction in such documents. The Court also noted the quality of the witness present at the time of seizure. In the facts of the present case, the inconsistencies and/or contradictions that the petitioner seeks to highlight, in our view are without much substance. There may or may not be typographical errors in the numbers given in the arrest memo and in the first information report relating to the general diary. They are however not sufficient to return a finding that the petitioner dispelled the presumption under Section 37 of the NDPS Act, 1985. The medical condition of the petitioner subsisted at the point of time of the rejection of the earlier bail petition. The arguments sought to be advanced today were available to the petitioner at the time when the petitioner moved the earlier bail petition. These are the facts we take into consideration in the present case.

In such circumstances, we are unable to grant bail to the petitioner.

So far as expeditious disposal of the trial is concerned, we express our hope and trust that with the cooperation of the learned Public Prosecutor and the learned Advocate for the accused, the trial Court will be able to dispose of the same as expeditiously as possible, under the ongoing pandemic conditions.

CRM 6213 of 2021 is dismissed.

(Debangsu Basak, J.)

(Ananda Kumar Mukherjee, J.)