

04.10.2021
28
Ct. No 29
sdas
rejected

C.R.M. 6604 of 2021
(via video conference)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Raninagar Police Station Case No. 323 of 2020 dated 06.09.2020 under Sections 21(c)/29 of the NDPS Act.

And

In Re : Ripon Sk. & Anr. petitioners

Mr. Arindam Jana
Mr. Tapodip Gupta

... for the petitioners

Mr. Saryati Datta

... for the State

Petitioners seek bail.

Learned advocate appearing for the petitioners submits that the petitioners were falsely implicated in the instant case. He relies upon the judgement of the Supreme Court reported in **(2019)18 SCC 215 (Vijay Pandey vs. State of Uttar Pradesh)** and the order dated August 10, 2018 by the co-ordinate Bench in **CRM No. 5708 of 2018** in the matter of **Ansar Ali**. He also submits that since there are irregularities in the arrest memo and in the seizure list, bail should be granted. Moreover, he submits that since the police submitted charge-sheet further detention of the petitioners is not required. He refers to the age of one of the petitioners.

Learned advocate appearing for the State submits that 200 bottles of Phensedyl were seized from the joint possession of the petitioners.

Since commercial quantity of narcotics was seized from the joint possession of the petitioners, the provisions of Section 37 of the NDPS Act are attracted.

By virtue of Section 37 of the NDPS Act the Court is required to return a finding that there is a reasonable belief that the petitioners are not guilty of the crime. Since the State is represented, the other requirement of Section 37 of the NDPS Act, 1985 of hearing the Public Prosecutor stands fulfilled, in the facts of the present case.

It appears from the first information report and the seizure list that raid was conducted at Jhagrajol near a culvert under Raninagar Police Station during 18.05 hours to 19.15 hours. The seizure list does not contain the name of the independent person. The arrest memo does not contain any signature of any independent person. The police explains such absence on the plea that the independent persons at the locale refused to sign the seizure list and the arrest memo.

The issue of absence of independent person is an issue of fact and best left to be considered and decided upon at the trial. Prima facie, we are not satisfied that the entire seizure procedure stands vitiated and, therefore, warrants grant of bail. We are not in a position to hold that the explanation of absence of independent persons is without any basis at all, as the materials made available to us. In the case of Ansar Ali (supra)

the seizure was made at a bus stand where the absence of independent persons would not be adequately explained and in such context bail of the petitioner was granted. Vijay Pandey (supra) is a decision on appeal where the entire evidence was considered. In the facts of the present case, trial is yet to commence. We are unable to return a finding under Section 37 of the NDPS Act, 1985 in favour of the petitioners. Commercial quantity of contraband was seized from the possession of the petitioners. We are unable to grant bail to the petitioners.

Accordingly, prayer for bail is rejected and the application being CRM 6604 of 2021 is dismissed.

(Debangsu Basak, J.)

(Ananda Kumar Mukherjee, J.)