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Serial no. 34
Dd

(Through Video Conference)

CRM 6636 of 2021

In re : An Application for **Bail** under Section **439** of the Code of Criminal Procedure in connection with **NDPS case No. 177 of 2019** arising out of **Sagardighi** Police Station Case No. **479** of **2019** dated **19.09.2019** under **Sections 21(C)29** of the NDPS Act .

-And-

In the matter of : Tetul Ghosh@ Tentul Ghosh

... ..Petitioner

Mr. Manjit Singh,
Mr. Gaganjyot Singh
Mr. Biswajit Mal, Advocates
... .. For the Petitioner
Mr. Sanjoy Bardhan,
Ms. Baishakhi Chatterjee, Advocates
... ..For the State

Petitioner renews the prayer for bail.

Learned advocate appearing for the petitioner submits that the petitioner was falsely implicated. He relies upon two cases- **2011(11) SCC 653 [Bhola Singh vs. State of Punjab]** and **(2020) 13 SCC 447[Sujit Tiwari vs. State of Gujarat & Anr.]** in support of his contention . He submits that the petitioner is the owner of the vehicle from which the alleged contraband is said to be seized. The petitioner did not have any control over the movement of the alleged contraband in the vehicle belonging to him. Considering the period of detention and considering the fact that the police submitted charge sheet, bail should be granted.

Learned advocate appearing for the State draws the attention of the court to the contents of the case diary. He submits that the petitioner is the owner of the vehicle. The petitioner also issued a letter of authority in favour of the

driver. The earlier application for grant of anticipatory bail and bail were rejected by the co-ordinate Benches. He submits that the police submitted charge sheet. The charges stand framed. The trial court fixed a date for recording evidence.

The petitioner is required to establish ground to dispel the presumption under Section 37 of the NDPS Act, 1985.

In the facts of the present case, commercial quantity of narcotic was seized from a vehicle owned by the petitioner. The petitioner is unable to establish conclusively at this stage that the petitioner did not have control over the vehicle at the material point of time when the narcotic substance was found from the vehicle. The petitioner is yet to conclusively establish that the presence of the narcotic in the vehicle was without his knowledge or consent.

The factual scenario appearing in **Bhola Singh (supra)** and **Sujit Tiwari (supra)** are different. In **Bhola Singh (supra)** no evidence was brought on record to show that the accused knowingly permitted use of the vehicle for improper purposes. In the facts of the present case the trial is yet to commence. It would not be appropriate to say at this stage that the petitioner did not permit the user of the vehicle in the manner as it was done. In **Sujit Tiwari (supra)** an educated person was found on a vessel on which contraband was found. In the fact of that particular case, the Court found it appropriate to grant bail on stringent condition.

In the fact of the present case, we are unable to return a finding under Section 37 of the NDPS Act 1985 in favour of the petitioner. Consequently, we are not inclined to grant bail to the petitioner.

CRM 6636 of 2021 is **dismissed**.

(Debangsu Basak, J.)

(Ananda Kumar Mukherjee, J.)