

09.11.2021
Sl. No.72
sp
[Rejected]

C. R. M. 7169 of 2021

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 28.10.2021 in connection with Serampore Police Station Case No.86 of 2021 dated 05.03.2021 under Sections 21(c) of the NDPS Act.

And

In Re: ***Md. Shahnawaz @ Md. Sahenawaz***

... .. Petitioner

Mr. Avik Ghatak, Advocate
Ms. A. Begum

... .. for the petitioner

Md. Anwar Hussain, Advocate
Mr. Ashok Das, Advocate

... .. for the State

Petitioner has applied for bail on the ground that the alleged seizure has not been done according to the statutory requirements of Section 52A of the NDPS Act.

Learned counsel for the petitioner has referred a judgment reported at (2016) 3 SCC 375 (Union of India vs. Mohanlal) and an order passed by a co-ordinate bench of this court in CRM 8037 of 2020.

It is further submitted that the petitioner is in custody for 249 days and further detention is not necessary.

Learned lawyer for the State opposes the prayer for bail and submits that the search in the present case was conducted in presence of a Special Executive Magistrate cum Gazetted Officer, who was not a member of the raiding party. Hence, no prejudice was caused to the petitioner in drawing of samples and the chain of custody with regard to the samples drawn at the spot and those, which were sent for chemical examination has not snapped.

We have considered the materials on record. Statements of witnesses including the contemporaneous documents namely, first information report and the seizure memo show that upon apprehending

the petitioner, requisition was made to a Special Executive Magistrate cum Gazetted Officer and in the presence of such Gazetted Officer, search was effected and recovery of narcotic substance above the commercial quantity that is 2.2 litres of codeine mixture was made from the possession of the petitioner. Samples were also drawn in presence of the Gazetted Officer and sent for chemical examination. Chemical examination report is placed on record and it appears that the sealed samples with signatures of the seizing officer as well as the accused, matched the samples examined by the chemical examiner. Hence, chain of custody with regard to the articles seized and those examined examination by the chemical had not snapped.

The aforesaid factual matrix distinguishes the present case from the case in CRM 8037 of 2020 wherein neither search was conducted nor samples were taken in presence of the superior Gazetted Officer. Nothing is placed on record or to show that the superior Gazetted Officer has any enmity towards the petitioner. With prejudice to the aforesaid, we are of the further opinion that non-compliance of Section 52A of the NDPS Act is to be assessed in the backdrop of the entire evidence on record including the fact whether the seized contraband is available for actual production in court.

These circumstances can only be assessed in the course of trial and it would be premature to express any opinion at this stage and to grant bail to the petitioner on such score.

However, the factual matrix of the instant case, where the seizure of the contraband and samples being drawn in the presence of an independent Gazetted Officer, we are of the opinion no palpable prejudice is caused to the petitioner is sufficient to rebut the statutory restrictions under Section 37 of the NDPS Act, and would justify grant bail to him.

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

(Aniruddha Roy, J.)

(Joymalya Bagchi, J.)