

20.12.2021
saswata
ct 28
sl no. 113

C.R.M. 7613 of 2021

In Re : An application for bail under section 439 of the Code of Criminal Procedure filed in connection with N.C.B Crime No. 16/NCB/KOL/2020 dated 09.09.2020 under section 8(c) read with sections 2b(ii)C/21/21(C)/23/25/27A/28/29 of the NDPS Act.

And

In Re : Ashim Roy

..... petitioner

Mr. Ayan Bhattacharjee

Mr. Anand Keshari

..... for the petitioner

Mr. Y.J. Dastoor, Ld. ASG

Mr. Phiroze Edulji

..... for the NCB

Petitioner is in custody for 472 days. It is submitted no narcotic substance was recovered from his possession.

It is further submitted that he has been implicated on the basis of his statement recorded under Section 67 of the NDPS Act, which is inadmissible in law.

Learned Additional solicitor General opposes the prayer for bail. He submits that name and other particulars of the petitioner were given as the representative of the consignor and the consignment was used to conceal illegal export of 11.180 Kgs of *charas*. On the leading statement of the petitioner, further recoveries of narcotic substance were made from the shop of his employer.

We have considered the materials on record. Name and other particulars of the petitioner were provided as the representative of the consignor and consignment was used to conceal illegal export of narcotic substance. The petitioner made a statement under Section 67 of the NDPS Act. We are conscious of the fact that such statement is inadmissible in law in view of ***Tofan Singh -vs- The***

State of Tamil Nadu¹. However pursuant to such statement and on the showing of the petitioner, recovery of narcotic substance was effected from the premises of one Rajesh Mishra, employer of the petitioner.

It is pertinent to note when a statement recorded under Section 67 of the NDPS Act leads to the discovery of a fact, admissibility of the portion of the statement which leads to recovery requires to be considered in the light of Section 27 of the Evidence Act. Under such circumstances and keeping in mind the prima facie materials connecting the petitioner with dealing/exporting narcotic substance above commercial quantity outside the country and in view of the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

Accordingly, the prayer for bail is rejected.

(Joymalya Bagchi, J.)

(Bivas Pattanayak, J.)

¹ (2021) 4 SCC 1