

06.01.2021

Item No.47
Ct.No.42
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 4449 of 2008

**Md. Abu Taleb Shaikh
versus
The State**

In Re: An Application under Section 401/482 of the Code of Criminal Procedure, 1973 filed in connection with Tehatta P.S. Case No. 156/07 dated 22.5.2007 and charge sheet No. 44/08 dated 14.2.08 under Section 17(b)/18/25 N.D.P.S. Act pending in the court of the learned Special Judge, Nadia.

Mr. Kazi Safiullah,
Ms. Madhuri Das ... For the Petitioner.

Mr. Rana Mukherjee,
Ms. Sujata Das ... For the State.

Mr. Safiullah, learned advocate appearing for the petitioner submits that the petitioner is aged about 82 years and there is no evidence against this petitioner as the recovery was made from his house when he was not available and it was only his wife who has handed over the seized contraband. It is further submission of the learned advocate for the petitioner that having regard to the materials so collected, no prima facie case has been made out against him.

Mr. Mukherjee, learned advocate appearing for the State submits that the case has been pending for a considerable period of time and as there was an interim order, there has been no progress. It is reflected that prosecution has relied upon 13 witnesses and the chemical

examiner's report dated 28.06.2007 reveals the sample so seized contains heroin along with opium.

Having regard to the issues raised by Mr. Safiullah, which is a mixed question of fact and law, I do not think that this is a fit case for interference at this stage.

It has been submitted by Mr. Safiullah that the petitioner is an aged person presently being 82 years old.

In case, the petitioner surrenders before the learned court and if, an application for bail is advanced on behalf of the petitioner before the concerned court, the learned court amongst others would consider the factum of age, ailment and health of the present petitioner.

LCR be sent back to the learned court below.

With the aforesaid observations, CRR 4449 of 2008 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the necessary formalities.

(Tirthankar Ghosh, J.)