

02.03.2021
Court No.28
Item No. 02
Krishnendu
Bail Rejected

CRM 9074 of 2020
(Via video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : **Kammaluddin Khan**

Petitioner

Mr. Deep Chaim Kabir
Me. Subrata Saha

For the Petitioner

Mr. Y. J. Dastoor, Id.A.S.G.
Mr. Phiroze Edulji
Mr. Abhishek Aditya

For the N.C.B.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with N.D.P.S. Case No. N-196/2018 arising out of NCB Crime No. 52/NCB/KOL/2018 dated 01.11.2018 under sections 22c/28/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 .

Mr. Kabir, learned advocate for the petitioner strenuously argues regarding the manner in which the seizure had been carried out by ignoring the provisions of Section 42 of the N.D.P.S. Act (in short, the said Act). He submits that as the raid was conducted after sunset and before sunrise by the authorities, it was incumbent for them to take permission of the learned magistrate before carrying out the search. Mr. Kabir also relies upon the judgment of **Sarija Banu (A) Janarthani & Ors. –vs- State through Inspector of Police** and submits that the Hon'ble Apex Court was pleased to grant bail in the said case

wherein there was alleged violation of Section 42 of the said Act. According to him, nothing is reflected in the complaint which would show adherence of the provisions of the said Act which is mandatory and as per the dictum of the Hon'ble Apex Court should have been complied with by the authorities. He further submits that if the petitioner is released on bail, he would be able to face the trial in a convenient manner by instructing his learned advocate on his defence.

Mr. Dastoor, learned Additional Solicitor General appearing for the N.C.B. submits that paragraph 2 of the complaint filed before the learned Special Court would detail the issue raised by the learned advocate for the petitioner. Mr. Dastoor refers to the first document in the list of documents referred to in the petition of complaint, which is dated 31.10.2018 at 07.00 hours and the said document speaks that it was under the direction of the Zonal Director, N.C.B. search and seizure was carried out by the officer named therein.

In view of the raid being carried out pursuant to an order by an officer of Gazetted rank, *prima facie*, we are of the opinion that there was substantial compliance of Section 42 of the said Act and it would be for the petitioner by way of cross-examination to dispute the same. Having regard to the factum of seizure, which has been effected and which was of commercial quantity, being 137 grams (1340 nos.) of Methamphetamine (1340 nos.), the provisions of Section 37 of the said Act are attracted. As such, we are not inclined to

release the petitioner at this stage. Accordingly, the prayer for bail of the petitioner is rejected.

The application for bail, being CRM 9074 of 2020, is disposed of.

(Tirthankar Ghosh, J)

(Tapabrata Chakraborty, J)