

19.02.2021
Item no.01
Court No.28
Avijit Mitra

C.R.M.9200 of 2020 (through video conference)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Seizure Case No.02/NDPS/CL/CUS/BDNPU/2018 dated August 31, 2018 under Sections 15(c)/29 of the Narcotic Drugs and Psychotropic Substances Act;

And

In Re : Sk. Nayeem @ Kalo Nayeem

.... Petitioner

Mr. Himangshu De,
Mr. Navonil De,
Mr. Rajeshwar Chakraborty
....for the petitioner
Mr. Amal Kumar Datta
..... for the U.O.I.
Mr. Amitabrata Roy
....for the Customs

Mr. De, learned advocate appearing for the petitioner submits that the petitioner is in custody for about 138 days and he has been falsely implicated in the case on the basis of statement of a co-accused. Learned advocate further submits that he is innocent of the charges and has been falsely implicated in the instant case. Additionally learned advocate submits that the petitioner is willing to abide by any stringent condition imposed by this Court in case he is released on bail.

Learned advocate appearing for the Customs authorities submits that the subject matter of the case involves recovery of 750 Kgs. of poppy straw which is above commercial quantity and the provisions of Section 37 of the N.D.P.S. Act are as such attracted. Learned advocate further stresses on the issue that the petitioner has been evading the process and by virtue of

warrant of arrest issued by the Superintendent of Police, Birbhum the petitioner could be apprehended and brought within the ambit of the present case. However, on specific query from this Court the learned advocate appearing for the Customs authorities categorically submits that except the statement of a co-accused no other material is appearing so far as the present petitioner is concerned. Additionally the learned advocate on further query from this Court submitted that no raid was conducted on the premises of the present petitioner and as such there is no seizure list in the case records which can be of further evidence for the prosecuting authorities.

We have perused the materials on record and assessed the submissions of the rival parties. On an assessment of the same and relying upon the Special Bench judgment of the Hon'ble Apex Court in Toofan Singh's case reported in (2020) SCC Online SC 882, we are of the opinion that *prima facie* the petitioner has been able to rebut the rigors of Section 37 of the N.D.P.S. Act and as such the prayer for bail of the petitioner is allowed.

Accordingly, we direct that the petitioner, namely, **Sk. Nayeem @ Kalo Nayeem** shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, both must be local, to the satisfaction of the Learned Judge, 3rd Special Court (N.D.P.S. Act), Purba Burdwan and on further condition that while on bail the petitioner would meet with Mr. R.N. Bhattacharya, Inspector of Customs, Burdwan Customs Preventive Unit once in a week until further orders.

The Inspector of Customs, Burdwan Customs Preventive Unit is present in Court and his further appearance before this Court is dispensed with.

The application for bail being C.R.M. No.9200 of 2020 is, accordingly, disposed of.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)