

14.07.2021
Court No.30
Item No. 20
Krishnendu
Bail Granted

**CRM 10765 of 2020
(Via video Conference)**

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

And

In Re : **Samir Dey**

Petitioner

Mr. Sandipan Ganguly
Mr. Karan Dudhwewala

For the Petitioner

Mr. Y.J.Dastoor, Id. A.S.G.
Mr. Phiroze Edulji
Mr. Debu Chowdhury

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 Special Case No. 27 of 2019 under section 8(c) read with sections 21(c)/23/25/29 of the Narcotic Drugs and Psychotropic Substances Act (arising out of N.C.B. Crime No. 22/NCB/KOL/2019).

Mr. Ganguly, learned senior advocate appearing for the petitioner submits that the petitioner is presently aged about 64 years and is suffering from diabetics. He has been falsely implicated and there had been no recovery of any contraband substance from his possession. Initially, a notice under section 67 of the NDPS Act was issued to the petitioner on 23rd September, 2020. He submitted a representation praying for extension of time to appear before the concerned officer. In response thereto, a further notice was issued on 12th October,

2020 directing him to appear on 2nd November, 2020. However, prior thereto, he was arrested on 18th October, 2020 and is languishing in custody since then. Upon conclusion of investigation, charge sheet has also been submitted in the month of October, 2020.

Mr. Ganguly argues that the petitioner had been roped in on the basis of some confessional statements made by the petitioner and one co-accused person, which are inadmissible in evidence, in view of the judgment delivered by the Hon'ble Supreme Court in the case of *Tofan Singh – Vs- State of Tamil Nadu* reported in *2020 SCC OnLine SC 882*.

Mr. Dastoor, learned Additional Solicitor General appears on behalf of the NCB and opposes the petitioner's prayer placing reliance upon the statements of accused persons, as recorded under Section 67 of the NDPS Act. He submits that the matter involves recovery of contraband substance above commercial quantity and the call detail records clearly reveal the direct involvement of the petitioner in the alleged offence and in view of such incriminating materials on record, the petitioner's prayer for bail needs to be refused.

In *Tofan Singh* (supra), it has, *inter alia*, been held that the confessional statements under section 67 of the NDPS Act are inadmissible in law. *Prima facie*, apart from the confessional statements there is no other substantive material evidence against the petitioner and in our opinion, the call detail records and the telephonic conversation of the petitioner with co-

accused persons may give rise to a mere suspicion but would not justify a case of conspiracy. In the said conspectus, the rigors of section 37 of the NDPS Act are not attracted.

In the present pandemic situation and rapid proliferation of the virus, prayer for bail needs to be considered liberally unless custodial interrogation is absolutely necessary [See the order passed by the Hon'ble Supreme Court in **Re: Contagion of Covid-19 Virus in Prisons**]. The petitioner is an aged person and it is not likely that he would interfere with the investigation or delay the trial by abscondence.

Accordingly, we allow this application and direct that the petitioner, namely, ***Samir Dey*** shall be released on bail upon furnishing a bond of ₹20,000/- with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Judge, Third Special Court under NDPS Act, Malda and on condition that he shall reside at Balurghat and shall not leave the jurisdiction of Balurghat Police Station save and except for attending the learned trial court on all the dates, as fixed for hearing.

The petitioner shall also meet the Officer-in-Charge of Balurghat Police Station once a fortnight until further orders.

He shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable

cause, the learned trial court would be at liberty to cancel the petitioner's bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 10765 of 2020, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Suvra Ghosh, J)

(Tapabrata Chakraborty, J)