

14.07.2021
Court No.30
Item No. 21
Krishnendu
Bail Granted

**CRM 10818 of 2020
(Via video Conference)**

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

And

In Re : **Santu Saha**

Petitioner

Mr. Ayan Bhattacharya
Ms. Ankita Bose

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)/25/29 of the Narcotic Drugs and Psychotropic Substances Act (arising out of N.C.B. Crime No. 22/NCB/KOL/2019).

Mr. Bhattacharya, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated and there had been no recovery of any contraband substance from the possession of the petitioner. After receiving notice under section 67 of the NDPS Act, the petitioner appeared before the NCB officers on 14th September, 2020 and on 15th September, 2020 he was arrested and since then he is languishing in custody. Upon

conclusion of investigation, charge sheet has also been submitted in the month of October, 2020.

Mr. Bhattacharya argues that the petitioner had been roped in on the basis of some confessional statements made by the him 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. 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**].

Accordingly, we allow this application and direct that the petitioner, namely, **Santu Saha** 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 Gangarampur and shall not leave the jurisdiction of Gangarampur 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 Gangarampur 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.10818 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)