

CRM No.11013 of 2020

09.03.21 In re: An application for bail under Section 439 of the Code of Criminal
(S.R.) Procedure filed in connection with **Botanical Garden** Police Station
Sl.22 Case **No.72 of 2020** dated **09.05.2020** under Sections **20(b)(II)(c)/29**
Ct.28 of NDPS Act, 1985;

And

In re: Imtiyaj Khan & Ors.

... petitioners.

Mr. Satadru Lahiri
Md. Zeeshar Uddin
Ms. Amrin Khatoon

... for the petitioners.

Mr. B. Panda
Mr. S. Bhakat

...for the State.

The learned advocate appearing for the petitioners submits that the petitioners were arrested on 9th May, 2020. The prosecution did not file any charge sheet within 180 days and as such, the petitioners submitted an application for statutory bail, which was rejected by an order dated 18th November, 2020 passed by the learned Judge, Special Court under NDPS Act.

He further submits that the learned Court below misconstrued the mandate of Section 167(2) of the Code of Criminal Procedure and erred in rejecting the petitioner's prayer for statutory bail though they had rightly invoked the provisions thereof, after completion of the mandatory period of 180 days for filing of charge sheet.

Mr. Panda, learned advocate appearing for the State submits that contraband substance above the commercial quantity was recovered from the joint possession of the petitioners.

He further submits that due to the COVID situation, the charge sheet could not be filed within 180 days and that no application for extension of time to submit the charge sheet was filed.

Indisputably, the petitioners were arrested on 9th May, 2020. The charge sheet was not filed within 180 days and no application for extension of time to submit the said charge sheet was filed. It appears that the order dated 18th November, 2020 was passed in presence of the learned public prosecutor.

A perusal of the order dated 18th November, 2020 would reveal that the petitioners' prayer for statutory bail was mechanically rejected.

The right of statutory bail is not a mere statutory right but it is a part of the procedure established by law under Article 21 of the Constitution of India [*See the judgments delivered in the cases of M Ravindran versus Intelligence Officer, Directorate of Revenue Intelligence, reported in 2020 0 Supreme (SC) 627 and Bikramjit Singh VS State of Punjab, reported in 2020 0 Supreme (SC) 586*].

Applying such proposition of law to the facts of this case, we are of the opinion that the petitioners are entitled to statutory bail.

Accordingly, the petitioners, namely, **Imtiyaj Khan, Saif Ali @ Vicky and Sk. Mohammad Adnan**, shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court, **Howrah**.

Accordingly, the application for bail being CRM No.11013 of 2020, is allowed.

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

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)

