

02.03.2021
Item no.04
Court No.28
Avijit Mitra

C.R.M. 11116 of 2020 (through video conference)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Suti Police Station Case No.184 of 2020 dated 11.05.2020 under Section 21(C) of the N.D.P.S. Act;

And

In Re : Tutul Saikh

.... petitioner

Mr. Anisur Rahman

....for the petitioner

Mr. Sanjoy Bardhan,

Mr. Palash Chandra Majhi

..... for the State

Leave is granted to the learned advocate of the petitioner to effect necessary correction in the cause title and prayer portion of the application.

The present application under Section 439 of the code of Criminal Procedure has been preferred by the petitioner in connection with Suti Police Station Case No.184 of 2020 dated 11.05.2020 under Section 21(C) of the NDPS Act.

The learned advocate appearing for the petitioner submits that the petitioner was arrested and produced before the Learned Judge, Special Court, 2nd Court, Malda on 12th May, 2020 for the alleged offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). His prayer for bail was rejected. As no charge sheet was filed within the mandatory period of 180 days, the petitioner filed an application for statutory bail under Section 167(2) of the Code of Criminal Procedure, 1973 ('CrPC') on 9th

November, 2020 before the learned Judge, Special Court under NDPS Act. Two days thereafter, i.e., on 11th November, 2020, the charge-sheet dated 6th November, 2020 was filed before the learned Chief Judicial Magistrate, Murshidabad, as would be explicit from the orders dated 17th November, 2020 passed by the learned Judge, Special Court under NDPS Act. On the next date fixed for hearing, i.e., on 18th November, 2020, the petitioner renewed his prayer for statutory bail stating *inter alia* that the charge sheet had not been filed within the statutory period and that the investigating officer did not also pray for any extension of time. The petitioner's prayer was, however, rejected by the Learned Judge, Special 3rd Court, Malda.

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

Mr. Bardhan, learned advocate appearing for the State opposes the petitioner's prayer and submits that upon completion of investigation, charge sheet was prepared *vide* memo dated 6th November, 2020 and was filed before the competent court on 11th November, 2020, prior to disposal of the petitioner's application for bail dated 9th November, 2020. As such there is no infirmity in the order dated 18th November, 2020.

Indisputably, the petitioner was remanded to judicial custody on 12th May, 2020 and the mandatory period of 180

days prescribed for filing of final report ended on 8th November, 2020, excluding the date of remand and including the date of filing of charge sheet. The charge sheet was thus, admittedly filed on the 183rd day.

A perusal of the order dated 18th November, 2020 would reveal that consideration of the petitioner's prayer for statutory bail was mechanically rejected and the subsequent submission of the charge sheet could not have been a ground towards denial of statutory bail to the petitioner.

The right to statutory bail is not a mere statutory right but is 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 O Supreme (SC) 627* and *Bikramjit Singh VS State of Punjab, reported in 2020 O Supreme (SC) 586*].

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

Accordingly, the petitioner, namely, **Tutul Saikh**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only), with two sureties of the like amount, one of whom must be local, to the satisfaction of the Learned Judge, Special Court, Berhampore, Murshidabad under the NDPS Act and on further condition that the petitioner shall not leave the jurisdiction of Suti Police Station without the leave of the trial court and shall attend the trial on every date of hearing.

The application for bail being C.R.M. No.11116 of 2020 is,
accordingly, disposed of.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)