

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

(Via Video Conference)

**CRM 174 of 2021
IA No: CRAN 1 of 2021**

In Re : An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with C.R. (N.D.P.S.) Case No.24 of 2019 under Sections 20(b)/25 of N.D.P.S. Act, 1985 arising out of the Kotwali Police Station Case No.486 of 2019 dated 11.08.2019 under Section 20(b) and Section 25 of N.D.P.S. Act, 1985.

And

In Re : Rama Kishan @ Krishna Bishnoy and another
... petitioners.

Mr. Sekhar Basu,
Mr. Rajdeep Majumder,
Mr. A. Das,
Mrs. Arushi Rathore,
Mr. Pritam Roy,
Mrs. Radhika Agarwal

... for the petitioners.

Mr. Aditi Shankar Chakraborty,
Mr. Sourav Ganguly

... for the State.

Learned senior counsel appearing for the petitioners argues that, in the present case, Section 42(2) and Section 52A(2) of the NDPS Act, were not complied with.

That apart, learned senior counsel submits that the petitioners are entitled to statutory bail, since most of the extension applications were heard long after the expiry of the previous orders and at least one of the extension applications was filed beyond the expiry of the order of extension of time for investigation.

It is, thus, submitted that the petitioners are entitled as a matter of right to statutory bail as contemplated in Section 36A of the NDPS Act, read with Section 167 of the Criminal Procedure Code. Learned senior counsel relies on the judgment of *Hussainara Khatoon and others (V) vs. Home Secretary, State of Bihar, Patna* reported at (1980) 1 SCC 108, in support of the proposition that the Magistrate must, before making an order of further remand to judicial custody, point out to the under trial prisoner that he is entitled to be released on bail.

Learned senior counsel also places reliance on the judgment in *S. Kasi vs. State Through the Inspector of Police Samaynallur Police Station Madurai District*, reported at AIR 2020 SC 2921 in support of the proposition that the general order extending limitations, passed during the pandemic period, was for the benefit of those who have to take remedy, whose remedy may be barred by time, but such restrictions do not apply regarding the indefeasible right to get default bail on non-submission of charge-sheet within time prescribed, as enumerated in Section 167(2) of the Code of Criminal Procedure. As such, it is contended on behalf of the petitioners that the petitioners are not only entitled to statutory bail, but the delayed filing of charge-sheet ought to be deprecated.

Learned counsel appearing for the State-respondent controverts such submissions and opposes the application for bail. By placing reliance on *M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence*, reported at 2020 SCC OnLine SC 867, learned counsel for the State submits that, unless the accused

files an application for bail, there is no scope of taking advantage of the statutory period of custody, that is, 180 days.

However, read in conjunction, the mandate of the Supreme Court is clear as regards the duty of the Magistrate to inform the accused, at the time of remand, regarding his right to apply for bail. Nothing transpires from the records, which are produced before us today, that such intimation was given to the accused.

That apart, the prosecution took an extensively long time in filing the charge-sheet. Moreover, although extensions were given, at least one of the extension applications was filed beyond the expiry of the interim order extending time for investigation.

In most of the cases, the extension applications were decided on dates much subsequent to the filing of those, thereby granting retrospective extensions, which ought not to be construed to curtail the rights of a petitioner for default bail under Section 36A of the NDPS Act, read with Section 167(2) of the Criminal Procedure Code.

Moreover, since charge-sheet has already been filed, we see no justification in retaining the petitioners behind bar.

In any event, due to the nonchalant attitude of the prosecution, the extension applications were filed and moved late. The valuable right of personal liberty, as guaranteed by the Constitution, is only circumscribed by the rider that unless there is provision in law to the contrary, such right is implicit in a citizen. In the present case, there was substantial violation of the law-in-question. That apart, there is nothing substantial from the records

to controvert the contention that there were violations of Section 42(2) and Section 52A(2) of the NDPS Act.

In such view of the matter, the petitioners are entitled to bail.

Accordingly, CRM 174 of 2021 is allowed, thereby granting bail to the petitioners, namely, (i) Rama Kishan @ Krishna Bishnoy and (ii) Subhas Bishnoy, on condition that the petitioners shall furnish bonds of Rs.30,000/- each, with two sureties of like amount for each of the petitioners, one of whom, for each of the petitioners, will be local, to the satisfaction of the learned Special Court (under NDPS Act), Second Court at Jalpaiguri and that the petitioners shall not issue any inducement, threat or promise, directly or indirectly, to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any Police Officer or the court and/or tamper with the evidence. The petitioners shall attend every day of trial as soon as the same commences and shall not leave the jurisdiction of the trial court during the course of trial.

CRAN 1 of 2021 is disposed of accordingly.

Let the records be sent down to the trial court immediately through the Registry of this Circuit.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Kausik Chanda J.)