

29.04.2021

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AN/ Ct. No. 1

**IN THE CIRCUIT BENCH CALCUTTA HIGH COURT
AT JALPAIGURI**

C.R.M. 511 of 2021

In the matter of : **Sirajul Mia & Ors.** **... Petitioners**

Mr. Arnab Saha, Adv.

... for petitioners

Mr. Arun Kumar Sarkar, Adv.

Mr. Tapan Bhattacharjee, Adv.

... for state.

Application for bail under section 439 of Code of Criminal Procedure, 1973 filed on 20.04.2021 in connection with NDPS Case no. 57/2020 arising out of Jaigaon P.S. Case no. 247 of 2020 dated 10.10.2020 under section 17(C) of the NDPS Act, 1985 by petition under section 439 of the Code filed at instance of **Sirajul Mia and Ors.** is taken up for hearing and order.

Mr. Saha, learned advocate appears on behalf of petitioners and submits, his clients are entitled to default bail. Statutory period, within which to complete the investigation, expired on 8th April, 2021. Charge sheet had not been filed by then. On 12th April, 2021, petitioners filed default bail petition alongwith put up petition. It is his submission that the put up petition was disposed of with direction for the petitions to be heard at 3.00 P.M. that day. At the time of hearing of his clients' petition, the charge sheet was submitted. In the circumstances, default bail cannot be denied to petitioners.

Mr. Sarkar, learned advocate appears on behalf of State and submits, huge quantity of brown sugar was recovered. He relies on orders dated 12th April, 2021, passed by Judge, Special Court (under the NDPS

Act), 2nd Court, Jalpaiguri. The hand written order preceding the type written order says as follows:

“Received Charge Sheet bearing no. 51/21 dt-11.04.21 u/s-17(c) of POCSO Act against four (4) accd. Persons namely (1) Manik Hossain (2) Abu Taleb @ Milan (3) Rabi Sha and (4) Sirajul Mia in c/w Jaigaon PS Case No-247/20 dt-10.10.2020.

Above mention all the four accd. persons are in J.C.

The C.S. be kept with the case record. Cognizance is taken

To date (10.05.21) for production.”

The type written order says as follows:

“Later dated 12.04.2021

Subsequently bail petition has been filed on behalf of accused persons namely 1) Sirajul Mia, 2) Manik Hossain, 3) Rabi Sha and 4) Abu Taleb @ Milan praying for statutory bail. Copy of the bail application could not be served upon the Ld. Prosecution as he was not available but subsequently he was present to do hearing in regard to bail application.

Heard both sides. Perused the record.

*Although Ld. defence counsel has prayed for statutory bail on the ground that the period of 180 days has already been completed but neither the investigating agency submitted chargesheet not was there any petition for extension but the fact remains that **at the moment charge sheet has been submitted** against all the above named accused persons.*

Considering the fact that charge sheet has already been submitted and also taking note of the fact that the defence counsel has not prayed for any statutory bail on the earlier occasion when the statutory right had already accrued, the court finds no merit in the prayer of the accused for statutory bail and as such the same stands rejected.

Fix 10.05.2021 for production and supply of copies.”

(emphasis supplied)

He relies on judgment of Supreme Court in **M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence** available at **2020 SCC OnLine SC 867**, paragraph 78.3. Mr. Saha replies by relying on views of coordinate Bench in order **dated 12th April, 2019** on **CRM 3033 of 2019**.

Sub-section (4) in section 36A of NDPS Act, 1985, alongwith proviso are reproduced below:

“(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”:

PROVIDED that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.”

The facts are, statutory period expired on 8th April, 2021. Charge sheet was not filed. There was no report or application for extension of time. On 12th April, 2021, put up petition and bail petition were there before the Special Judge. By hand written order submission of charge sheet was recorded. The procedure adopted by the Court as to received from or filed by who does not appear from the handwritten order. Order sheet of that Court says the type written order was later. Going by the order sheet, charge sheet was received and cognizance taken, before the bail petition was filed.

We reproduce paragraph 78 from **M. Ravindran** (supra):

“78. Therefore, in conclusion:

78.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPC read with Section 36A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public

prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

78.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

78.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

78.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and / or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.”

The NDPS Act, 1985 is a special statute. It provides for extension of time to complete the investigation by proviso in sub-section (4). The extension may be granted on report of the Public Prosecutor indicating progress of the investigation and specific reasons for detention of the accused beyond the said period of 180 days. In this case, 180 days expired but there was no report seeking extension. Question is whether thereafter, taking the charge sheet to be submitted before the bail petition was moved, petitioners' right, accrued on expiry of the statutory period, can be said to be extinguished.

Paragraph 78.1 in **M. Ravindran** (supra) says once accused files application for bail under proviso to section 167(2) of the Code of Criminal Procedure, 1973, read with section 36A, he is deemed to have availed of or enforced his right to be released on default bail. Paragraph 78.2 says, the right to be released on default bail continues to remain enforceable notwithstanding pendency of the bail application or subsequent filing of charge sheet or report seeking extension. Said paragraph is not applicable here. Paragraph 78.3 says, where accused fails to apply for default bail when the right accrues to him and subsequently charge sheet or additional complaint or report seeking extension is filed, the right to default bail would be extinguished.

In the facts here, petitioners had availed their right to be released on default bail. There was no report for extension of time to conclude the investigation. The charge sheet was filed out of time. Out of time filing of charge sheet would still be good, had petitioners not applied for bail. The handwritten and typed orders of 12th April, 2021 appears to have been written at the same time. The typed order is continuation of the handwritten order. It begins with the word 'Subsequently!' It does not mention the put up petition. Paragraph 78.3 in **M. Ravindran** (supra) makes it clear that where the accused fails to apply for default bail and there is subsequent filing of charge sheet, the right would be extinguished.

Facts of this case can be dealt with on applying declaration of law in paragraph 78 of **M. Ravindran** (supra). We have not, therefore, looked at any other view. We find petitioners had acquired indefeasible right to be enlarged on default bail as charge sheet had not been filed within statutory period, there being no report seeking extension of time and petitioners having had applied soon after expiry of the period.

Accordingly, we direct that petitioners shall be released on bail upon furnishing bond of Rs.25,000/- (Rupees Twenty Five Thousand) only each with two sureties of like amount, one of whom shall be local, to the satisfaction of the learned Special Judge (under the NDPS Act), 2nd Court, Jalpaiguri on condition that they shall appear before the trial Court on every date of hearing and shall not intimidate witnesses nor tamper with evidence in any manner whatsoever. Any or all of petitioner if fails to appear in Court at trial on any day, the trial Court may cancel the bail without reference to this Court.

The application for bail is, accordingly, **allowed.**

CRM 511 of 2021 is disposed of.

(Arindam Sinha, J.)

(Rajarshi Bharadwaj, J.)