

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Miscellaneous Jurisdiction
Appellate Side

**C.R.M 530 of 2021
with
CRAN 1 of 2021**

**Phani Sarkar @ Fani Sarkar
-Vs.-
The State of West Bengal**

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Suvra Ghosh**

For the petitioner : Mr. Sourav Chatterjee, Adv.
Mr. Arkadeb Bhattacharya, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Aniruddha Biswas, Adv.

Heard On : 24.08.2021 & 26.08.2021

CAV on : 26.08.2021

Judgment On : 14.09.2021

Suvra Ghosh, J.:-

1. The petitioner is in custody since 20.02.2020 and prays for statutory bail.

2. The petitioner submits that charge sheet was not submitted within the stipulated period of time and only on the date on which the petitioner's prayer for statutory bail was taken up for consideration by the learned trial court, the prosecution submitted charge sheet before the learned court. The learned court took cognizance of the charge sheet and rejected the petitioner's prayer by the same order. Learned Counsel for the petitioner has placed reliance upon the observation the Hon'ble Supreme Court in M. Ravindran vs Intelligence Officer, Directorate of Revenue Intelligence, reported in (2021) 2 SCC 485 and S. Kasi vs State Through the Inspector of Police Samaynallur Police Station, Madurai District, reported in 2020 SCC Online SC 529 in support of his contention.

3. The State opposes the prayer for bail.

4. We have considered the material on record.

5. It is not in dispute that contraband article above commercial quantity was recovered from the possession of the petitioner and in the normal course, he is not entitled to bail in view of the statutory restriction under section 37 of the NDPS Act.

6. However, certain other facts have come into play in the present case prompting the petitioner to pray for statutory bail. The petitioner was arrested on 20.02.2020 and is in custody since then. Prior to expiry of the statutory period of 180 days for submission of charge sheet, such period was extended by 30 days with effect from 17.08.2020 by an order dated 18.08.2020 on prayer of the learned Special Public Prosecutor.

7. No charge sheet being filed before the learned trial court even after expiry of 180 days as stipulated under Section 36-A(4) of the NDPS Act or

the extended time period, the petitioner prayed for statutory bail before the learned court on 22.02.2021. After the said application was heard by the learned trial court, the prosecution submitted charge sheet before the learned court and cognizance of the same was taken by the learned court on the same day, i.e., on 22.02.2021.

8. As mandated by the proviso to Section 36-A(4) of the NDPS Act, the Public Prosecutor ought to have prayed for extension of time to complete the investigation stating specific reasons for detention of the accused/petitioner beyond the period of 180 days. No such petition appears to have been filed by the prosecution before the learned trial court prior to filing of the bail petition by the petitioner.

9. As observed by the Hon'ble Supreme Court in *M. Ravindran* (supra), "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." In other words, an accused should be released on statutory bail on his prayer upon expiry of 180 days or the extended period, as the case may be, notwithstanding filing of the charge sheet by the prosecution subsequent to filing of the bail petition.

10. Things would of course have been different had the prosecution filed an application for further extension of time to complete investigation prior to expiry of the extended period of 30 days or even prior to the petitioner applying for statutory bail. In that case, the learned trial court would have had to decide the application of the prosecution first. If such decision was in favour of the prosecution, i.e., if the time was extended, the petitioner's

application for statutory bail would have failed. On the other hand, if the application of the prosecution was rejected, the petitioner's application for statutory bail would have been allowed as a matter of course.

11. In the present case, charge sheet was submitted before the learned trial court only after the bail petition was taken up for consideration by the learned court. The charge sheet was filed after expiry of the extension of time granted by the learned court and no further extension was sought by the prosecution. Therefore the right that accrued to the petitioner upon expiry of 180 days or the extended period of 30 days, could not have been negated by the learned trial Court. The petitioner having availed of his right to be released on bail, is entitled to statutory bail.

12. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the NDPS Act at Jalpaiguri and on further conditions that he shall remain within the jurisdiction of the concerned police station and shall report to the Investigating Officer/Officer-in-Charge of the concerned police station once in a fortnight until further orders.

13. The petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

14. In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.

15. The application for bail is allowed.

16. Accordingly, CRM 530 of 2021 along with CRAN 1 of 2021 is disposed of.

17. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Arijit Banerjee, J.)

(Suvra Ghosh, J.)