

13.04.2022
Serial no.92
[Dd]
(Bail **Rejected**)

CRM (NDPS) 158 of 2022

In re : An Application for **Bail** under Section **439** of the Code of Criminal Procedure in connection with **NDPS Case No. 165 of 2021** arising out of **Jiaganj** Police Station Case No. **124** of **2021** dated **August 11, 2021** under Sections **21(c)/29** of the Narcotic Drugs and Psychotropic Substances Act, 1985.

-And-

In the matter of : Dhiraj Das

... ..Petitioner

Mr. Tapas Kr. Ghosh,
Mr. Tanmay Chowdhury, Advocates
... .. For the Petitioner

Mr. Sanjoy Bardhan,
Mr. Nirupam Dhali, Advocates
... ..For the State

Petitioner seeks bail.

Learned advocate appearing for the petitioner draws the attention of the Court to the seizure list. He submits that although seizure is said to be made in the early hours of August 11, 2021, there was no independent witnesses in the seizure list. He relies upon an order dated December 16, 2021 in CRM 5799 of 2021 [Sukesh Mondal @ Budesh] and submits that in similar circumstances the co-ordinate Bench granted bail to such accuseds.

Learned advocate appearing for the State submits that the seizure was made on August 10, 2021, samples were taken and sent to the forensic laboratory. The report of the forensic laboratory states that seized articles are narcotic. Police filed charge sheet and supplementary charge sheet. The Court took cognizance of the offences committed, charges are yet to be framed. In the present

case commercial quantity of narcotic was recovered from the possession of the petitioner. The seizure list does not contain independent witnesses. Absence of independent witness *per se* does vitiate the seizure. It is a matter of trial as to whether seizure at all stands vitiated or not.

In the facts of the present case cognizance was taken by the jurisdictional Court. Order of taking cognizance is not under challenge.

In Suresh Mondal @ Budesh (supra), the coordinate Bench granted bail to the accused therein on the facts and circumstances obtained therein. The present facts and circumstances herein are different.

Considering the fact that commercial quantity of narcotic was seized from the possession of the petitioner, we are of the view that the petitioner is unable to overcome the restrictions under Section 37 of the NDPS Act, 1985.

Consequently, we are not inclined to grant bail to the petitioner.

Prayer for bail of the petitioner is **rejected**.

CRM (NDPS) 158 of 2022 is **dismissed**.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)