

CRM (NDPS) 170 of 2022
(via video conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : Gouranga Sarkar

.....Petitioner

Mr. Angshuman Chakraborty

.....for the Petitioner

Mr. Sanjoy Bardhan

Mr. Palash Chandra Majhi

.....for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Gaighata P.S. Case No. 1149/2016 dated 23.12.2016 under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that it would be explicit from the contents of the complaint initially registered that the recovery of contraband substance was from a tin shed and tin made wall single separate room nearby the house of the petitioner on the basis of the leading statement of one Nripen Roy. From the deposition of one Nilkanta Mondal, it would appear that no document regarding ownership of the house was collected and Nripen Roy had no visiting terms at the said house. Upon considering the said materials, Nripen Roy was ultimately acquitted in the said case.

Answering our query Mr. Chakraborty submits that the petitioner was arrested on 1st September, 2021 and he is languishing in custody for about 182 days. On the basis of the materials as collected, when the principal accused has been acquitted, it cannot be said that the petitioner has any nexus with the alleged offence. In the said conspectus, the petitioner may be enlarged on bail on any stringent condition.

Mr. Bardhan, learned advocate appearing for the State opposes the petitioner's prayer and submits that the petitioner had been absconding since the date of registration of the complaint on 23rd December, 2016. The charge sheet was submitted showing the petitioner as absconding and thereafter, upon exhaustion of the process for ensuring presence of the absconding co-accused persons, the trial was splitted and the trial was '*filed for the present against the petitioner*'. In view of such conduct, the petitioner is not entitled to the relief, as prayed for.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

Prima facie, the dispute as regards the place of recovery of contraband substance above commercial quantity involves questions of fact and is an issue to be decided at the time of trial. As there had been a recovery of contraband substance above commercial quantity from the house of the petitioner, the statutory restrictions are attracted and his prayer for bail is refused at this stage.

The application CRM (NDPS) 170 of 2022 is, accordingly, dismissed.

The learned Court below is, however, directed to expedite the trial.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)