

21.02.2022
Serial no. 32
Aloke
Ct. No. 29

CRM (NDPS) 206 of 2022

In re : An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 11.02.2022 in connection with Jagacha P.S. Case No. 173 of 2020 dated 03.09.2020 under Section 21(c) of the NDPS Act, 1985.

-And-

In the matter of: Amit Bahadur Sastri @ Jhantu
... ...Petitioner

Mr. Mrityunjoy Chatterjee, Advocate
Mr. Susnigdho Bhattacharyya, Advocate
... ... For the Petitioner
Mr. Sudip Gosh, Advocate
Mr. Apurba Kr. Datta, Advocate
... ...For the State

Petitioner seeks bail.

Learned Advocate appearing for the petitioner submits that the petitioner was falsely implicated. He submits that the petitioner is in custody in excess of one year five months. He submits that the seizure was shown to be made from a place over which the petitioner did not have any control. The alleged seizure was made allegedly on the basis of the statement of the petitioner made while in custody. He relies upon three orders of the Coordinate Benches where, under similar facts and circumstances the Court granted bail. He relies upon **CRM 9347 of 2019 (In re: Mithun Chandra)**, **CRM 6827 of 2019 (In the matter of: Entajul Mondal)** and **CRM 8259 of 2019 (In re: Julfikar Mondal @ Julu Mondal)**.

Learned Advocate appearing for the State submits that the facts of the cases of the three orders relied upon by the petitioner are different from the present case. He submits that pursuant to the leading statement made by the petitioner, the recovery was made. The recovery is of

commercial quantity. According to him, the petitioner is unable to rebut the presumptions under Section 37 of the NDPS Act, 1985.

In **Julfikar Mondal @ Julu Mondal (Supra)** and **Entajul Mondal (Supra)** the Coordinate Bench considered the facts of such cases. The Coordinate Bench was persuaded to grant bail primarily in view of the seizure not being witnessed by any independent witness apart from other materials in the case diaries with regard to such cases.

In the facts of the present case, the petitioner was in custody of the police in respect of another police case. There, as appears from the case diary produced before us in the present police case, the petitioner made a statement on August 23, 2020 with regard to the present consignment. Apparently acting on the basis of such leading statement recorded on August 23, 2020 of the petitioner, the police raided a four storied condemned building at Icchapur Canal Side Road on September 2, 2020 between 22.55 hours and 23.30 hours. The police proceeded to seize narcotics of commercial quantity from such place. The alleged seizure was witnessed by four persons, none of whom are independent witnesses.

It is intriguing that the police were acting in the present case on the basis of a statement made by the petitioner while in custody on August 8, 2020 and that the police force could find time only on September 2, 2020 and that too between 22.55 hours and 23.30 hours to recover the narcotics from a condemned building with no independent witnesses. The petitioner admittedly does not have any control over the place at which the narcotic was seized.

Considering the fact that the alleged seizure was made in the circumstances as noted above and considering the fact that the seizure was not witnessed by any independent witnesses, we are of the view that the petitioner is able to rebut the presumptions under Section 37 of the NDPS Act,

1985. Consequently, we are inclined to grant bail to the petitioner.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act, 1985, 3rd Court, Howrah, subject to condition that the petitioner shall appear before the learned trial court on every date of hearing until further orders and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

In the event, the petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel the bail of the petitioner in accordance with law without further reference to this Court.

The prayer for bail is allowed.

CRM (NDPS) 206 of 2022 is disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)