

14.03.2022

Serial no.38

Dd

CRM (NDPS) 258 of 2022

In re : An Application for **Bail** under Section **439** of the Code of Criminal Procedure in connection with **NDPS case No. 3 of 2015** arising out of **NCB Crime No. 03/NCB/Kol/2018 (23/2014-2014-15)** under Sections **20(b)(iii)(c)** NDPS Act, 1985.

-And-

In the matter of : Mithun Dhara

... ..Petitioner

Mr. Kazi Safiullah, Advocate

... .. For the Petitioner

Mr. Y. J. Dastoor, Id. ASG

Mr. Uttam Basak, Advocates

... ...For the NCB

Petitioner renews the prayer for bail.

Learned advocate appearing for the petitioner submits that considering the period of detention of seven years, the petitioner should be enlarged on bail. He refers to an order dated December 20, 2021 in CRM 7987 of 2021 in support of his contention that the considering of period of detention, an accused can be enlarged on bail.

Learned Additional Solicitor General appearing for the Narcotic Control Bureau draws the attention of the Court to the fact that order of rejection of the earlier bail petition of the petitioner was on August 9, 2021 in CRM 11181 of 2020. He submits that commercial quantity of narcotic was seized from the possession of the petitioner.

There is an order of rejection passed on August 9, 2021 where the period of detention was considered and the same was negated.

In CRM 7987 of 2021 the coordinate Bench considered the period of detention and granted bail to the accused therein was in the factual matrix of that case. In that case, the evidence of the prosecution was closed in 2016. A revisional application was preferred by the prosecution which was yet to be disposed of on the date of the order granting the bail. The factual scenario of the present case is different.

A compelling case needs to be made out for exercising of jurisdiction under Article 21 of the Constitution of Indian. In the facts of the present case, the petitioner apart from claiming the period of detention as one of the grounds of enlargement of bail, failed to make out any case for exercising powers under Article 21 of the Constitution. Period of detention, per se, does not entitle an accused to an order of bail.

Considering the fact that commercial quantity of narcotic was seized from the possession of the petitioner and considering that there is hardly any change in circumstance subsequent to the earlier order of rejection, we are of the view that the petitioner is unable to overcome the restrictions under Section 37 of NDPS Act, 1985.

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

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

CRM (NDPS) 258 of 2022 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

