

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

CRM 2195 of 2021

**Bikash Singh @ Vikash Kumar Singh
VS.**

The Narcotics Control Bureau, Kolkata Zonal Unit

For the petitioner : Mr. Debajyoti Deb
Mr. Abhisek Banerjee,
Ms. Shanchita Banerjee,
Mr. Sanjoy Kumar Das, Advocates

For the NCB : Mr. Y. J. Dastoor, Ld. ASG
Ms. Joyeeta Dhar, Advocates

Heard on : February 15, 2022

Judgment on : February 15, 2022

DEBANGSU BASAK, J.:-

1. Petitioner seeks bail in connection with T.R. No. 07 of 2020 arising out of NCB crime No. 06/NCB/KOL/2020 corresponding to RPF/PST/HWN'S G.D. No. 70 dated 05.02.2020 under Sections 20(b)(ii) (c)/29/35 read with section 8(c) of the Narcotic Drugs and Psychotropic Substances Act.

2. Learned advocate appearing for the petitioner submits that the petitioner is in custody for 529 days. The police filed charge sheet. The petitioner is sought to be proceeded against on the basis of the statements of the co-accused which is of no evidentiary value in the eye of law. He submits that no narcotic was seized from the possession of the petitioner. The statements of the co-accused made while in custody and call records details, if there be any, are not pieces of evidence. In support of his contention he relies upon the order of the co-ordinate Bench dated **December 21, 2020** in **CRM 8145 of 2020** (In the matter of:- **Abdul Malique & Ors.**) and **(2009) 12 SCC 161 (Union of India vs. Balmukund & Ors.)**. He refers to the order dated **September 22, 2021** passed in **CRM 5710 of 2021** (In the matter of:- **Akhilesh Tiwari**) where despite the call record details bail was granted to an accused involved in a NDPS case.

3. Learned Additional Solicitor General appearing for the Narcotic Control Bureau submits that, there are call record details implicating the petitioner with those of the co-accused who are in custody. Commercial quantity of narcotic was seized from the co-accused in custody. The Narcotic Control Bureau also seized train tickets from the co-accused showing the destination as that of the hometown of the petitioner. According to him, there are nexus between the petitioner and the co-accused.

4. When a person seeks bail under Section 37 of the NDPS Act 1985, he is required to overcome the restrictions under Section 37 of the NDPS Act, 1985. In **Abdul Malique (supra)**, the co-ordinate Bench after taking note of **Tofan Singh vs. State of Tamil Nadu** reported in **2020 SCC Online SC 882**, allowed the bail of the accused therein. The factual scenario in the present case is different.

5. In **Akhilesh Tiwari (supra)**, the Division Bench noted that there was an order of the jurisdictional Court with regard to the call detail recording and, therefore, proceeded to grant bail to the petitioner therein. Again, the factual scenario is different in the present case.

6. In **Balmukund (supra)** is a criminal appeal on conclusion of trial. It revolves around Sections 67 of the Act of 1985. Again, the factual scenario is different in the present case.

7. In the facts of the present case, there are call record details between the petitioner and the co-accused who was apprehended with commercial quantity of narcotic. There are other incriminating evidence such as train ticket of the co-accused showing the destination station as that of the hometown of the petitioner.

8. In the circumstances, we are of the view that the prosecution is not proceeding against the petitioner wholly on the basis of the statements of the co-accused made while in custody. Credence should also be placed on the call record details and the conduct of the co-accused as noted above in the facts of the present case.

9. In such circumstances, we are of the view that the petitioner is unable to overcome the restrictions under Section 37 of the NDPS Act, 1985.

10. Consequently, we are unable to grant bail to the petitioner.

11. Prayer for bail is rejected. CRM 2195 of 2021 is, accordingly, dismissed.

(Debangsu Basak,J.)

12. I agree.

(Bibhas Ranjan De, J.)