

C.R.M. (NDPS) 390 of 2022

20.04.2022
Sl. 43
Court No.29
(sourav)
(Allowed)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with NDPS Case No. **11/2020**, arising out of **Chinsurah** Police Station Case No. **88** of **2020** dated **24.02.2020** under Sections **20(ii)(b)** of the Narcotic Drugs and Psychotropic substances Act, 1985.

And

In the matter of: **Jasoa Devi @ Jasodha Devi**

....petitioner.

Mr. Malay Bhattacharyya
Mr. Subhrajyoti Ghosh

...for the petitioner.

Mr. Binay Panda
Ms. Puspita Saha

... for the State.

Petitioner prays for bail.

Learned advocate appearing for the petitioner submits that the petitioner is in custody in excess of two years four months. The alleged seizures were not witnessed by independent person. He submits that the alleged seizures took place at a public place during the day time where absence of independent witnesses vitiates the alleged seizures. He relies upon an order dated February 21, 2022 passed in CRM (NDPS) 206 of 2022 (In the matter of Amit Bahadur Sastri @ Jhantu) where the Court considering similar situation was pleased to grant bail to the accused therein. He submits that the petitioner stands in the same footing.

Learned advocate appearing for the State submits that the trial is in progress. The next date fixed is July 14, 2022 for the purpose of recording the evidence of the prosecution. He draws the attention of the Court to the materials in the case

diary including the two seizure lists. He submits that initially a quantity of narcotic was seized from the possession of the petitioner. Thereafter, on the leading statement made by the petitioner, the second recovery was made. The recoveries are of commercial quantity. Therefore, the petitioner should not be enlarged on bail as the petitioner is unable to overcome the restrictions under Section 37 of the NDPS Act, 1985.

The first seizure was made on February 24, 2020. The seizure was made near Locopara gate beside Bandel Station Road between 10.40 a.m. and 11.25 a.m. During such seizure, no independent witnesses were present. The location is a public place. During the day time, there are large number of public available for the purpose of witnessing the seizure. The second seizure was made on February 26, 2020 claimed to be made after the leading statement made by the petitioner.

The second seizure was made at an abandoned quarter at Locopara, Bandel. Again, the place is not so remote so as to justify the absence of independent witnesses. The time for the seizure is 18.10 hours to 18.55 hours.

It is contended on behalf of the State that the police personnel noted in the case diary that despite requests being made to the members of the public, they refused to witness the seizure. There is no material in the case diary as to whether the police took any steps against such members of public who refused to witness the seizure as independent witnesses. Refusal by any member of the public to be a witness in the seizure invokes a liability under the law.

In such circumstances, the claim of the police that there were no independent witnesses available is belied on two grounds. Firstly, there were independent witnesses even by the version of the police that they allegedly refused to witness the seizure. Secondly, the police did not take any steps against the so called refusal by the independent witnesses.

In Amit Bahadur Sastri @ Jhantu (Supra), the Court considering the absence of independent witnesses in the facts of that case, returned a finding that the petitioner therein was able to overcome the restrictions under Section 37 of the NDPS Act, 1985.

In the facts of the present case, the two seizures claimed to be made by the police were not witnessed by any independent person. There was no dearth of independent witnesses at the locale.

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

Consequently, we enlarge the petitioner on bail.

Accordingly, the petitioner be released on bail upon furnishing a Bond of Rs. 10,000/- 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, Hooghly, subject to the condition that during bail he shall appear before the learned trial court on every date of hearing and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

The application for bail being **C.R.M. (NDPS) 390 of 2022** is, thus, disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

