

25.07.2022
Sl. No.56
akd

C. R. M. (DB) 1169 of 2022

In Re : An application for cancellation of bail under Section 439(2) read with Section 482 of the Code of Criminal Procedure filed on 06.04.2022
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A N D

In Re : The State of West Bengal

..... Petitioner-State

Mr. Ranadeb Sengupta

... .. for the petitioner-State

Mr. Soubhik Mitter
Mr. Arnab Chatterjee
Mr. Litan Maitra
Ms. Rajnandini Das

... .. for opposite party nos.1 & 2

Petitioner-State of West Bengal has assailed order dated 29th May, 2021 passed in NDPS Case No.10 of 2018 enlarging opposite party nos.1 & 2 on bail.

Mr. Ranadeb Sengupta, learned advocate appearing for the petitioner-State of West Bengal submits 203 kgs. of *Ganja* was recovered from the opposite party nos.1 & 2. Without considering the gravity of the offence and statutory restrictions under Section 37 of the NDPS Act, the trial court enlarged opposite party nos.1 & 2 on bail.

Mr. Soubhik Mitter, learned advocate for the opposite party nos.1 & 2 submits his clients are in custody for more than three years. In view of delay in trial and prevailing pandemic conditions, bail was granted to them.

We have considered the materials on record. There are ample materials to show opposite party nos.1 & 2 were in possession of narcotic substance above commercial quantity which attracts statutory restrictions under Section 37 of the NDPS Act. There is no reference to gravity of offence or statutory restrictions under Section 37

of the NDPS Act in the order granting bail. The Special court was persuaded to grant bail to opposite party nos.1 & 2 in view of the prevailing pandemic conditions.

It is trite law the court while granting bail in cases involving narcotic substance above commercial quantity must advert to the statutory restrictions under Section 37 of the NDPS Act and come to a credible belief that the accused has not committed the offence. [See: ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan***¹].

In ***Narcotics Control Bureau vs. Mohit Aggarwal***², the Apex Court held:-

“The Length of period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that they can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

Neither the Apex Court in SUO MOTU WRIT PETITION (C) NO. 1/2020 order dated 23.03.2020 nor the High powered Committee constituted in the State had recommended grant of bail in cases under NDPS Act involving commercial quantity.

Hence, mere reference to prevailing pandemic conditions would not justify suspension of non-consideration of gravity of the offence and statutory restrictions under Section 37 of the NDPS Act. That apart, trial has already commenced and witness action is in progress.

Mr. Mitter relies on an order of the Apex Court in ***Mahmood Kurdeya vs. Narcotics Control Bureau***³. The cited order relates to grant of bail in the facts of that case and no binding proposition of law under Article 141 of the Constitution of India has been declared therein.

¹ (2021) 10 SCC 100

² 2022 SCC OnLine SC 891 (para 18)

³ Criminal Appeal No.1570/2021 @ SLP (Crl.) No.7085/2021. Order dated 07.12.2021

On the other hand, in another case, a Bench of the Apex Court was inclined to cancel the bail granted to an accused as provisions of Section 37 of the NDPS Act had not been considered although the accused was in custody for about four years and trial had not commenced. [See: ***Union of India vs. Ikram Khan & Ors.***⁴]

It must be borne in mind bail orders are passed in peculiar facts of each case and may not be treated as binding precedent in other cases unless the said order propounds any binding precedent under Article 141 of the Constitution of India.

Factual matrix of the cited case is different from the present one. In ***Mahmood Kurdeya (supra)***, accused was in custody for more than three years and charge has not been framed. On the other hand, in the present case, trial has already commenced and witness action is in progress.

In the light of the aforesaid discussion, we are of the opinion the order granting bail to opposite party nos.1 & 2 is patently perverse and suffers from non-application of mind with regard to statutory restrictions under Section 37 of the NDPS Act and the same is liable to be cancelled.

Accordingly, order dated 29.05.2021 passed in NDPS Case No.10 of 2018 is set aside.

Opposite party nos.1 & 2 are directed to surrender before the court below within seven days from date failing which the Investigating Agency as well as the court below shall be at liberty to resort to appropriate processes for their apprehension in accordance with law.

In the event, the opposite party nos.1 & 2 surrender before the court below within the time frame as aforesaid, the trial court shall

⁴ (2000) 9 SCC 221

proceed with the case with utmost expedition and conclude the same at an early date preferably within six months from the next date fixed for recording evidence without granting unnecessary adjournments to either of the parties.

CRM (DB) 1169 of 2022 is thus disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)