

27.06.2022
cm/ct 28
sl no. 5

C.R.M.(NDPS) No. 600 of 2022

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with NDPS case NO. 99 of 2021 in connection with **Samsherganj P.S Case No. 124 of 2021** dated **29.05.221** under Sections **21 (c)/29 of the N.D.P.S. Act.**

Allowed

And

In Re : Israil Saikh & Ors.

..... petitioners

Mr. Soumajit Das Mahapatra
Mr. Jisan Iqubal Hossain

..... for the petitioners

Mr. T.D. Nandy
Mr. A. Basu

..... for the State

Petitioners pray for statutory bail. He submits application for extension of period of detention in terms of proviso under Section 36A (4) of N.D.P.S. Act was filed by the Investigating Officer instead of the Public Prosecutor. Prayer by Investigating Officer is impermissible in view of law declared in **Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotics Control Bureau & Anr.**¹ Hence, extension of period of detention on the basis of a non-est application is void in law. Accordingly, his client was entitled to statutory bail and had availed of such right on 29.11.2021 prior to submission of police report.

Learned lawyer for the State places on record the application for extension of period of detention under the proviso to Section 36A (4) of N.D.P.S Act. He refers to the caption of the application which reads as follows : “ **Through learned Public Prosecutor**”.

¹ (2009) 17 SCC 631

Hence, it is submitted that the application was preferred by the Public Prosecutor concerned and the extension was in accordance with law.

It is settled law on an application by the Public Prosecutor stating reasons for extension of period of detention beyond 180 days, the court may under the proviso to Section 36A (4) of N.D.P.S Act permit such prayer after recording reasons thereof. Hence, an application filed by the Public Prosecutor is a condition precedent for invoking of such power. In **Sanjay Kumar Kedia @ Sanjay Kedia (Supra)** the Apex court, inter alia, held an application filed by the Investigating Officer cannot be a surrogate for an application by the Public Prosecutor concerned.

We note that the application in the present case was filed and signed by the Investigating Officer. Mere quoting in the caption “Through Ld. P.P. Berhampore, Murshidabad” would not satisfy the requirements of law as there is no endorsement of the Public Prosecutor on the body of the application according his approval and concurrence thereto.

Hence, the application for extension of period of detention in the present case, in our estimation, is one made by the Investigating Officer and not the Public Prosecutor concerned. Thus, extension of the period of detention was impermissible on the basis of prayer at the end of the Investigating Officer and the petitioner had rightly availed of statutory bail on 29.11.2021 prior to submission of charge-sheet on 30.11.2021. Such relief was

illegally denied to the petitioner. Hence, we are inclined to grant statutory bail to the petitioners.

Accordingly, the petitioners be released on bail upon furnishing a bond of Rs.10,000/- each 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, Berhampore, Murshidabad on condition that the petitioners shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event they fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

Investigating officer is present. His presence is notated and dispensed with.

The application being CRM(NDPS) No. 600 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)