

29.06.2022.
07.
Ct.No.28
as
(Rejected)

C.R.M. (NDPS) 640 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No. 291 of 2017 arising out of NCB Crime No.62/NCB/KOL/2017 dated 13.12.2017 under Sections 8(c)/22(c)/22(a)/24/27/29 of the N. D. P. S. Act.

In the matter of : Kamalesh Baste @ Kamalesh
Panditrao Baste.

... Petitioner.

Mr. Sandeep Shinde,
Mr. Angshuman Chakraborty,
Mr. S. S. Saha.

...for the Petitioner.

Mr. Kalidas Saha.

...for the NCB.

Heard the learned Advocates appearing for the parties.

Learned Advocate appearing for the petitioner prays for bail. He submits his client is in custody for more than four years. It is further contended in spite of directions given by this Court, there is very slow progress in the matter. He further submits alleged recovery from the possession of his client is 0.3 grams of cocaine which is of small quantity. Allegation of conspiracy is vague and unfounded. He relies on various orders of the Hon'ble Apex Court regarding grant of bail in narcotic cases due to delay in trial.

Learned Advocate for the NCB opposes the prayer for bail. He submits petitioner is one of the conspirator in inter-State trafficking of narcotics. He had conspired with co-accused Nilay Ghosh and was regularly dispatching narcotic substance through private couriers. Statement of the

proprietor/employees of the courier firms endorse the role of the petitioner. Moreover, transactions with regard to illicit trade in narcotics was partly through legitimate banking channels and partly through dark web. Due to abscondance of a co-accused, intervening pandemic conditions and other systemic reasons there was delay in trial. Dates have been fixed for recording evidence of the witnesses including the aforesaid proprietor/employees of courier firms on and from 15th July to 18th July, 2022.

We have considered the materials on record. One Nilay Ghosh was arrested with narcotic substance above commercial quantity. Jerome Watson, a customer had also been arrested. In view of extent of his involvement, Jerome has been enlarged on bail. From the materials on record, it appears petitioner was one of the principals suppliers of narcotics to Nilay Ghosh. Statement of Mrs. Rasika Rajendra Bandiwedkar, Proprietor of Sanika Telecommunication and Courier Service, Nasik, Maharastra and other materials prima facie disclose involvement of the petitioner in dispatching a large number of consignments to the principal accused Nilay Ghosh who was dealing in narcotic substance. Complaint in the present case was filed in 2018 but trial could not commence as one of the accused viz., Saran Gopal Krishnan was absconding. Upon direction given by this Court in CRM 11058 of 2018 he was declared a proclaimed offender and charges came to be framed against the petitioner and co-accuseds on 5th August, 2019.

Prosecution proposed to examine 17 witnesses out of which 6 witnesses have already been examined.

Perusal of the order sheet would show delay in the matter cannot be wholly attributed to the prosecution. The Court lay vacant for a period of time and thereafter the trial was interdicted due to pandemic conditions. Presently dates have been fixed for examination of witnesses including aforesaid Mrs. Rasika Rajendra Bandiwedkar, personnel from DTDC who were allegedly utilised as conduits by the petitioner to dispatch drugs to Nilay Ghosh. In view of delicate stage at which the trial is poised particularly the examination of the aforesaid witnesses who are vital for the unfolding of the prosecution case of conspiracy and as there is ample possibility these witnesses may be won over if petitioner is released on bail, we do not consider it prudent to release the petitioner on bail.

We have considered the orders passed by the Hon'ble Apex Court in ***SLP. Leave to Appeal (Crl.) No.5617 of 2021 (Tapan Das Vs. Union of India)***, ***SLP (Crl) No.8823 of 2019 (Chittta Biswas alias Subhas Vs. The State of West Bengal)***, ***SLP (Crl.) No.5187 of 2021 (Kulwant Singh Vs. The State of Punjab)*** and ***SLP (Crl.) No.3813 of 2020 (Amit Singh Moni Vs. State of Himachal Pradesh)***. The said bail orders were passed in the factual backdrop of those cases which essentially relate only to possession of narcotic substance from single/multiple accuseds. The present case discloses an intricate and complicated web of conspiracy between accused persons in inter State trafficking of narcotics

through the dark web. Complexity of the case as well as the nature of evidence proposed to be led are relevant considerations which clearly distinguishes the present case from the factual matrix of those in respect of which bail orders have been cited before us. It is trite to observe bail orders are matters of moment and are passed in the factual matrix of a particular case. None of the orders cited before us declare any law which is of universal application.

In the light of the aforesaid discussion particularly the complexity of the prosecution case involving a deep conspiracy between accused persons in an inter State trafficking of narcotics and as the delay in the matter cannot be wholly attributed to the prosecution and the delicate stage at which the trial is poised requiring examination of the vital witnesses who may be won over resulting in an adverse impact on the fate of the prosecution, we do not wish to enlarge the petitioner on bail.

We request the trial court to take all prompt steps to conduct the trial on a day to day basis and conclude the same as expeditiously as possible preferably within six months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

It is further proposed prosecution may take all endeavour to examine the vital witnesses of fact at the earliest before examining official witnesses.

Accordingly, the prayer for bail of the petitioner is rejected.

Department is directed to communicate a copy of this order to the learned trial Court for necessary compliance.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)