

06.06.2022
cm/ct 28
sl no. 2

C.R.M. No. 6290 of 2021

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with **English Bazar P.S Case No. 73/2021** dated **15.01.2021** corresponding to **NDPS case No. 11/2021** punishable under Sections **21(c)/29** of the NDPS Act, 1985.

And

Rejected

In Re : Nesarul Islam @ Nesharul Islam

..... petitioner

Mr. Sourav Chatterjee
Mr. Aniruddha Bhattacharyya
Mr. Mounick Ghosh

..... for the petitioner

Mr. Swapan Banerjee
Mr. Suman De

..... for the State

Petitioner seeks statutory bail.

Learned counsel contends extension of the period of remand pending investigation under proviso to Section 36 A (4) of NDPS Act was not in accordance with law. He draws our attention to the cryptic application made by the Public Prosecutor for extension of time as well as the order dated 15th July, 2021 extending the period of remand of the petitioner.

Learned Senior Government advocate appearing for the State submits order dated 15.07.2021 has not been assailed in this bail application. He further submits period of remand during investigation was extended as the FSL report was awaited.

In reply, learned counsel submits as the extension was without authority of law, denial of liberty on such score may be agitated at any point of time.

We have considered the rival submissions of the parties. Proviso to Section 36 A (4) of NDPS Act, inter alia empowers a court

to extend the period of remand of an accused pending investigation from 180 days to 360 days. Such extension may be made on the prayer of the Public Prosecutor and upon ascribing cogent reasons. Perusal of the order dated 15.07.2021 shows the Judge considered the materials on record and in view of the fact that the FSL report was awaited extended the period of remand. Procurement of FSL report with regard to the seized article is an essential part of investigation. Under such circumstances extension of period of remand pending investigation has a clear nexus with completion of investigation and is wholly justified.

We have considered the materials on record. Prima facie disclosing the involvement of the petitioner with regard to alleged possession of narcotic substance above commercial quantity i.e. 320 grams of heroin.

In view of the aforesaid facts and in the light of the statutory restrictions under Section 37 of the N.D.P.S. Act, we are not inclined to grant bail to the petitioner on merits too.

The application for bail is thus **rejected**.

Trial court is requested to consider the issue of framing charge at the earliest and in the event charge is framed to take the proceeding to its logical conclusion without granting unnecessary adjournments to either of the parties.

The application being CRM No. 6290 of 2021 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)