

28.02.2022
Serial no. 41
Aloke
Ct. No. 29

CRM 7011 of 2021

In re : An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 26.10.2021 in connection with Malda P.S. Case No. 500 of 2021 dated 07.10.2021 under Sections 21(c)/29 of the NDPS Act.

-And-

In the matter of: Aktarul Sk.

... ...Petitioner

Mr. Sekhar Kr. Basu, Sr. Advocate

Mr. Souvik Mitter, Advocate

Ms. Rajnandini Das, Advocate

Ms. Arushi Rathore, Advocate

... ... For the Petitioner

Mr. Sanjan Bardhan, Advocate

Ms. Manisha Sharma, Advocate

... ...For the State

The application for bail is taken up for consideration subsequent to the order dated February 21, 2022. By such order, the two independent witnesses named in the seizure list were allowed to record their statements under Section 164 of the Code of Criminal Procedure.

Learned Advocate appearing for the State submits that the two independent witnesses volunteered to record their statements under Section 164 of the Code of Criminal Procedure. He submits copies of such statements in Court.

The recorded statements are perused and returned to learned Advocate for the State.

The petition was initially considered by the Coordinate Bench on November 3, 2021. So far as this Bench is concerned, two earlier orders were passed being February 14, 2022 and February 21, 2022.

Learned Senior Advocate appearing for the petitioner submits that the petitioner was falsely implicated. His submission with regard to the false implication of his client

are recorded in the order dated February 14, 2020. Noticing such conditions of the petitioner, report was called for from the Superintendent of Police as to whether the office of the Superintendent of Police did receive the complaint spoken of by the petitioner or not on the date concerned and the time of receipt thereof. The Superintendent of Police submitted on February 21, 2022 a report which states that the complaint lodged on behalf of the petitioner was received by his office at the fag end of the working hours on October 7, 2021.

The past conduct of the petitioner regarding his dealing with the police are relevant. Apparently, the petitioner was arrested with regard to two cases under the NDPS Act, 1985 in which he was enlarged on bail. The conditions of bail required the petitioner to report before the Investigating Officer. The petitioner was doing so. According to the petitioner, the Investigating Officer was not recording his appearance before the Investigating Officer on the respective dates of his appearance before him.

Since the petitioner apprehended that the petitioner was shown to be in violation of the conditions for grant of bail, he brought such fact to the notice of the jurisdictional Court through his Advocate.

According to the petitioner this act of the petitioner infuriated the Investigating Officer. The jurisdictional Court called upon the Investigating Officer to show-cause. The Investigating Officer was present in Court on October 7, 2021. Immediately, after the matter was over the petitioner was unlawfully confined and taken away by the police. The uncle of the petitioner lodged a complaint with the local Bar Association and with the Superintendent of Police on October 7, 2021 itself with regard to such incident. The petitioner was shown to be arrested from a spot away from the Court with commercial quantity of narcotics on October 7, 2021 between 10.25 to 11.15 P.M.

What is a matter of intrigue is that the Superintendent of Police received the complaint from the uncle of the petitioner on October 7, 2021 about the illegal detention of the petitioner by the police at noon from the Court premises. According to the Superintendent of Police, such complaint was received by his office at the fag end of the working hours of October 7, 2021. The uncle of the petitioner states is such complaint that the petitioner was bodily lifted by the police force from the Court premises immediately after the matter in Court was over. There is a complaint of the uncle of the petitioner with the Bar Association lodged to the same effect. Even discounting the complaint lodged with the local Bar Association by the uncle of the petitioner, the complaint with the Superintendent of Police stands. The time of the arrest of the petitioner shown in this police case is late in night and with commercial quantity of narcottics.

In such circumstances, the possibility of the petitioner being falsely implicated by the police cannot be ruled out wholly taking into consideration the background as narrated above.

Learned Advocate appearing for the State submits that the investigation is in progress. The police are yet to file charge-sheet. Since the commercial quantity of narcotic was recovered from the possession of the petitioner, the petitioner cannot be enlarged bail. In any event, he submits that, the independent witnesses named in the seizure list recorded statement under Section 164 of the Code of Criminal Procedure corroborating the incident. Moreover, in the event, the arrest is illegal the petitioner will be compensated in accordance with law.

No doubt the petitioner will be entitled to compensation if the initial arrest was shown to be illegal and the police acting illegally. However, till such time such finding is returned by appropriate forum the issue is whether the petitioner will continue to remain in custody or not.

In the facts as narrated above, the possibility of the petitioner being shown arrested in the late night with commercial quantity of narcotics to falsely implicate the petitioner cannot be ruled out. There is a police complaint lodged by the uncle of the petitioner on the same date which was received by the Superintendent of Police at least 4 hours prior to the time of arrest. Therefore, it would be presumptuous to say that the petitioner masterminded the police complaint and was caught arrested on the same date after four hours from the time of receipt of the complaint by the office of the Superintendent of Police.

In such circumstances, we are of the view that the petitioner is able to rebut the presumptions under Section 37 of the NDPS Act. Consequently, we are inclined to grant bail to the petitioner.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.50,000/- (Rupees Fifty Thousand only) 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 cum Additional District and Sessions Judge, 4th Court, Malda, subject to condition that the petitioner shall appear before the concerned Superintendent of Police once in a week till the conclusion of the investigation and on further condition that the petitioner will inform the Superintendent of Police as also the jurisdictional Court as to his residence and mobile phone number and on further condition that the petitioner shall appear before the learned trial court on every date of hearing until further orders and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

In the event, the petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel the bail of the petitioner in accordance with law without further reference to this Court.

The prayer for bail is allowed.

CRM 7011 of 2021 is disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)