

01.04.2022

Sl. 67

Court No.29

SD/Saswata

C.R.M. 7077 of 2021

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Muchipara Police Station Case No. 37 of 2020 dated 15.02.2020 under Sections 21(C)/29 of the NDPS Act, 1985.

And

In the matter of: Durga Rani Mondal @ Chaya

....petitioner.

Mr. Sekhar Kumar Basu

Mr. Antarikhya Basu

Ms. Ankita Das Chakraborty

Mr. Sayan Mukherjee

Mr. Sagnik Mukherjee

Ms. Madhumita Basak

...for the petitioner.

Mr. Swapan Banerjee

Mr. Suman De

...for the State.

The petitioner seeks bail.

Learned senior advocate appearing for the petitioner submits that the application for bail was considered by the coordinate Bench. He refers to three several orders passed by the coordinate Bench. He refers to the order dated November 9, 2021, December 6, 2021 and February 23, 2022 passed by the coordinate Bench. He contends that there are discrepancies in the date of incident as noted in the arrest memo, inspection memo and option given to the accused persons. He makes elaborate submissions with regard to the dates appearing on such documents. He submits that the three documents contain two dates one being January 15, 2020 and the other being February 15, 2020.

He refers to the orders of the coordinate Bench and submits that affidavits were called for from the Investigating Officer and another police personnel. He refers to the affidavit of such person and submits that there is hardly any explanation

with regard to the discrepancies noted in the three documents. It is for the State to explain the discrepancies. The State, not being able to explain the discrepancies noted in the documents, the Court should consider the prayer for bail. Learned senior advocate appearing for the petitioner submits that another co-accused standing on the same footing was enlarged on bail by the jurisdictional court.

Learned advocate appearing for the State submits that the seizure and the arrest took place on February 15, 2020. The accuseds were produced before the jurisdictional Magistrate on February 16, 2020. The discrepancies are typographical in nature. In any event, the discrepancies are something which are required to be decided at the trial. He refers to the affidavits and submits that the discrepancies stand explained by the police personnel.

Commercial quantity of narcotics was seized from the joint possession of the petitioner.

The petitioner is, otherwise, not in a position to rebut the presumptions under Section 37 of the NDPS Act, 1985.

The contentions and discrepancies in the three documents are required to be considered.

In the three documents, two dates are used. One is January 15, 2020 and the other is February 15, 2020. The two dates appear in the three documents in different places. It is not a case where one set of dates appears in one document and another set of dates appears in the other documents. The most likely scenario as explained by the police personnel by filing

affidavit is the typographical error and the mistake creeping in inadvertently.

Significantly, there are signatures in the option form of the petitioner giving the date as February 15, 2020. Contemporaneously, the petitioner accepted that the incident took place on February 15, 2020.

The petitioner was arrested actually on February 15, 2020 and was produced within 24 hours before the jurisdictional Magistrate on February 16, 2020. In the petition, the petitioner does not say that the petitioner was illegally detained from January 15, 2020.

The contentions with regard to the discrepancies in the documents should best be left at the trial. There are sufficient explanations at this stage from the police personnel in the affidavit filed in Court.

In view of the petitioner not being able to rebut the presumptions under Section 37 of the NDPS Act, 1985, we are unable to grant bail to the petitioner.

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

CRM 7077 of 2021 is, thus, dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)