

31.03.2022

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Ct. No. 29

**KAUSHIK
REJECTED**

C.R.M. 8132 of 2021

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Dankuni** Police Station Case No. **453** of **2016** dated 01.12.2016 under Sections 21(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act.

And

In Re : Md. Sohail @ Md. Sohail Khan

..... petitioner

Mr. Manjit Singh

Mr. G. Singh

Mr. Biswajit Mal

....for the petitioner

Mr. T. D. Nandy

Mr. A. Basu

....for the State

Petitioner renews the prayer for bail.

Learned advocate appearing for the petitioner submits that, the petitioner is in custody in excess of five years. The petitioner is entitled to bail in terms of Article 21 of the Constitution of India. He refers to a judgment of a Coordinate Bench dated **August 18, 2021** passed in **CRM 4139 of 2021 (Ramesh Mahato & Ors.)**. He submits that issue should be referred to a Larger Bench.

Learned advocate appearing for the State draws the attention of the Court to the status report. The petitioner as one of the accused is seeking adjournments at the trial. He also draws the attention of the Court to a judgment of this Hon'ble

Court dated **March 2, 2022** passed in **CRM (NDPS) 248 of 2022 (Ashok Shil @ Arun)**.

Ramesh Mahato and Ors. (supra) involved Article 21 of the Constitution of India to grant bail to an accused in detention for a period in excess of five years.

Ashok Shil @ Arun (supra) considers **Ramesh Mahato and Ors. (supra)**. It is of the view that in order to invoke provisions of Article 21 of the Constitution of India a compelling case to such effect needs to be made out. When Article 21 of the Constitution is invoked, Section 37 of the Act of 1985 is no bar to the grant of bail. In the facts of that case, it did not find the accused therein to be entitled to bail under Article 21 of the Constitution of India.

The law with regard to enlarging an accused on bail considering the period of detention of such accused, apart from infringement on Article 21 of the Constitution of India, is enshrined under Section 436 A of the Criminal Procedure Code. Section 436 A of the Criminal Procedure Code prescribes that an accused cannot be enlarged on bail provided he underwent detention for a period extending to one and half of the maximum period of imprisonment specified for the offence under the law which he is being tried. Section 436 A of the Criminal Procedure Code came into effect from June 23, 2006.

1994 Volume 6 Supreme Court Cases 731 (Supreme Court Legal Aid Committee vs Union of India and Ors.) is to be understood in the context of the provisions under Article 21 of the Constitution of India and the subsequent amendment in the

Criminal Procedure code effected by Section 436 A thereof. Section 436 A delineates the time period that the accused needs to undergo to obtain a bail thereunder. Article 21 of the Constitution of India is not limited by such fetter.

Supreme Court Legal Aid Committee (supra) and the prayer of bail on the basis of undergoing half of the minimum prescribed period of punishment was considered by another co-ordinate Bench in ***CRM 5066 of 2021*** dated ***December 20, 2021 (Shital Biswas vs. Narcotics Control Bureau)***. There the co-ordinate Bench held that an accused undergoing a detention for a period in excess of five years would give rise to a justification for the accused to seek bail on infraction of rights granted under the Constitution of India. Grant of relief in such cases would not come within the purview of Section 436 A of Criminal Procedure Code.

The issue of grant of bail in a case involving NDPS Act, 1985 is well settled. The petitioner seeking bail needs to rebut the presumptions under Section 37 of the NDPS Act, 1985 in order to obtain bail. The petitioner can also obtain bail under Section 436 A of the Criminal Procedure Code, if the fact scenario so warrants. The petitioner is also entitled to bail under Article 21 of the Constitution of India, if a case in respect thereof is made out. In such an eventuality, neither Section 37 of the Act of 1985 nor Section 436A of the Criminal Procedure Code are fetters.

In the facts of the present case, prosecution cannot be said to be indolent. The petitioner as the accused took several

adjournments at the trial. The petition is bereft of any particulars with regard to the violation of Article 21 of the Constitution of India. The petitioner was arrested with commercial quantity of narcotics. The petitioner is otherwise unable to overcome the restrictions under Section 37 of the Act of 1985. Consequently, we are unable to grant bail to the petitioner.

In such circumstances, prayer for bail of the petitioner is rejected and the application being CRM 8132 of 2021 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)