

CRM No.8252 of 2021

Via video conference

09.03.22

(S.R.)

Sl.129

Ct.32

In re: An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **Basirhat** Police Station Case No.572 of 2020 dated 13/05/2020 under Section 21(C) of the NDPS Act;

And

In re: Nikhilesh Mridha

... petitioner.

Mr. Angshuman Chakraborty

Mr. Shashanka Shekhar Saha

... for the petitioner.

Mr. Navanil De

... for the State.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that when the petitioner was in custody in connection with a different case, contraband substance was recovered from his matrimonial house. The petitioner had no control and domain over the premises from where contraband substance was recovered and there was no independent witness to the alleged recovery. In such circumstances, the statutory restrictions are not attracted. In support of such contention, he has relied upon an order passed by a Coordinate Bench of this Court in CRM No.7221 of 2019. Let a copy of the same, as produced, be kept on record.

He further submits that the petitioner had already suffered long incarceration for one year ten months and there is no possibility towards conclusion of the trial in the near future. In the said conspectus, further detention of the petitioner may not be necessary and he may be enlarged on bail on any stringent condition.

Mr. De, learned advocate appearing for the State opposes the petitioner's prayer and submits that on the basis of the petitioner's statement, contraband substance above commercial quantity was recovered from the matrimonial house of the petitioner. In support of such contention, he has drawn our attention to the seizure list as well

as the statement of the petitioner, as recorded under Section 161 of the Code.

In the backdrop of the facts, we are unable to accept Mr. Chakraborty's contention that the petitioner had no conscious possession of contraband substance above commercial quantity. The order upon which reliance has been placed by him is also distinguishable on facts.

Possession assumes different colours in different contexts. In the present case on the basis of the statement made by the petitioner recovery was effected and at this stage it cannot be ruled out that the petitioner had no conscious possession of such contraband substance. In our opinion, the statutory restrictions are attracted and we are not inclined to exercise discretion in his favour. As such, his prayer for bail is refused at this stage.

However, we have been informed that upon obtaining the chemical examiner's report, the supplementary charge sheet has already been submitted. In view thereof, the Learned Court below is directed to take up the issue of consideration of charges on the next date as fixed without granting any unnecessary adjournment to either of the parties. In the event, charges are framed the Learned Court below shall expedite the trial and conclude the same at the earliest.

The application for bail being CRM No.8252 of 2021 is, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)

