

07.09.2022
Sl. No.9
akd
[Rejected]

C. R. M. (NDPS) 1017 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 30.08.2022 in connection with Chandannagar Police Station Case No.148 of 2020 dated 17.12.2020 under Section 21(c) of the NDPS Act and Section 25(1)(a) of the Arms Act. (NDPS Case No.69 of 2020)

And

In Re: **Brijesh Yadav**

... .. Petitioner

Mr. Manjit Singh
Mr. Gaganjyot Singh
Ms. Tiya Mukherjee
Sk. Sahid Hossain

... .. for the petitioner

Mr. Sanjay Bardhan
Ms. Baisakhi Chatterjee

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for over a year. It is further submitted petitioner was apprehended at a different place but the recovery had not been witnessed by independent persons. It is also submitted FSL report does not disclose the weight and volume of the samples examined. It is argued there was no prior intimation and it is inexplicable how the raiding party had additional receptacles available to collect samples from the contraband which was recovered in course of a sudden search.

Learned advocate appearing for the State opposes the prayer for bail and submits police personnel who were present at the spot suspected transportation of narcotic substance in a Toto. Upon chase, they stopped the *Toto* and recovered 4.5 ltrs. of *codeine mixture* in all from the petitioner and co-accuseds. Though accused persons were apprehended around 6:30 P.M., the entire process of search, seizure

and preparation of seizure list took a couple of hours. In the meantime, necessary equipments/receptacles had been obtained and samples drawn. In spite of request, driver of the *Toto* did not join the search.

We have considered the materials on record. Statements of witnesses and other materials show petitioner and co-accuseds were travelling in a *Toto* which was stopped by police. They tried to flee away but were apprehended and narcotic substance above commercial quantity i.e. 4.5 ltrs. of *codeine mixture* in all was recovered from the petitioner and co-accuseds. Driver of the *Toto* did not join the search. Statements of the official witnesses as well as contemporaneous document i.e. seizure memo prima facie establish recovery of narcotic substance above commercial quantity. Impact of non-joining independent witnesses has to be assessed during trial in the backdrop of the entire evidence on record. The search and seizure process continued for a protracted period of time & sample bottles were requisitioned in the meantime. Samples drawn from the seized contraband were dispatched for chemical examination. FSL report confirms the samples contained narcotic substance i.e. *codeine phosphate*. Absence of weight and other particulars in the report does not prima facie militate with regard to the chain of custody and the findings therein. In view of the aforesaid materials on record and statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

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

We are informed date has been fixed for recording of evidence. Trial court is directed to expedite the trial and conclude the same as expeditiously as possible preferably within one year from the

next date fixed for recording evidence without granting unnecessary adjournments to either of the parties.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)