

03.11.2022
SI. No.17
akd
[ALLOWED]

C. R. M. (NDPS) 1244 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 11.10.2022 in connection with Khardah Police Station Case No.203 of 2022 dated 20.03.2022 under Sections 21(c)/29 of the NDPS Act.

And

In Re: **Sk. Ramjan**

... .. Petitioner

Mr. Debasis Kar
Mr. Subhajit Chowdhury
Mr. Arka Bhadra

... .. for the petitioner

Md. Anwar Hossain
Mr. Mirza Firoj Ahmed Begg

... .. for the State

It is submitted on behalf of the petitioner that he was arrested on 20.03.2022. After expiry of 180 days, petitioner prayed for statutory bail on 19.09.2022. By order dated 22.09.2022, his prayer came to be dismissed on the ground that the court below had granted an extension of the period of detention pending investigation on the report of the Public Prosecutor on 14.09.2022.

It is submitted on behalf of the petitioner that the order of extension is contrary to law. Petitioner was not produced before the court on that day and had no opportunity to participate in the proceeding. No copy of the application was served upon him. Hence, he prays for statutory bail.

Learned advocate appearing for the State submits the reason for grant of extension is duly reflected in the report of the Public Prosecutor viz. non-receipt of chemical examiner's report. This is an admitted position and upon consideration of such fact the period for

remand pending investigation was extended. Petitioner has not suffered any prejudice on such score.

We have considered the materials on record. In ***Sanjay Dutt vs. State through CBI, Bombay (II)***¹, a Constitution Bench of the Apex Court while dealing with similar provision under TADA relating to the power of the court to extend the period of detention pending investigation, inter alia, clarified though an accused may not have a right to be served with a written notice, he must be present at the time when the application for extension is considered.

In ***Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat***², the Apex Court again emphasized on the presence of the accused in Court when the application for extension is considered and his awareness of such fact. It further held, prejudice to the accused is inherent in the event of breach of such requirement.

Admittedly, the petitioner was not present and was unaware of the fact that on the strength of the report of the Public Prosecutor, extension was granted. This being contrary to the directions of the Apex Court in ***Sanjay Dutt*** (supra) & ***Jigar @ Jimmy Pravinchandra Adatiya*** (supra), we are of the opinion the order granting extension of the period of detention pending investigation is unauthorised and *nonest* in the eye of law. Petitioner is, therefore, entitled to statutory bail.

Accordingly, order dated 22.09.2022 is set aside.

Accused/petitioner, namely ***Sk. Ramjan***, be released on statutory bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court

¹ (1994) 5 SCC 410 [Paragraphs 46-49]

² 2022 SCC OnLine SC 1290

under the NDPS Act, Barrackpore, North 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application for bail, thus, stands **allowed**.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)