

20.10.2022

Vacation Bench
SL No.26
s.biswas

C.R.M. (NDPS) 1260 of 2022

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Naihati** P.S. Case No. **71 of 2019** dated **12.02.2019** under Section **21(c)** of the N.D.P.S. Act.

And

In the matter of: **Biswajit Saha @ Biswa**

...petitioner

Mr. Debasis Kar,
Mr. Arka Tilak Bhadra

...for the petitioner

Mr. Anowar Hossain,
Ms. Sujata Das

...for the State

We have heard the learned advocate for the petitioner and the learned Public Prosecutor-in-Charge. It is the prosecution case that 2.5 litres of codeine mixture being commercial quantity was recovered from the joint possession of the petitioner and one Gopal Sarkar.

It is submitted by the learned advocate for the petitioner that said Gopal Sarkar was granted bail by the learned Special Judge (NDPS)-in-Charge in connection with Naihati Police Station Case No.71 of 2019. The petitioner stands on the same footing. Since prosecution has not approached the Trial Court or any higher forum for cancellation of bail of the co-accused, the present petitioner is entitled to an order of bail. In support of his contention, Mr. Kar, learned advocate appearing for the petitioner refers to paragraph 23 of the case of **Sushanta Kumar Banik vs. The State of Tripura** decided by the Hon'ble Supreme Court on 30th September, 2022 in Criminal Appeal No.1708 of 2022.

Learned Public Prosecutor-in-Charge raised vehement objection against the prayer for bail on the ground that the bail of the co-accused Gopal Sarkar was granted by the Trial Court on different consideration and Section 37 of the N.D.P.S. Act, 1985 was not adhered to.

We have carefully gone through the order dated 29th June, 2021 passed in Naihati Police Station Case No.71 of 2019 dated 12.02.2019. The learned Trial Judge granted interim bail to the accused Gopal Sarkar on the ground that he sustained bleeding injury in an incident that took place in the month of May, 2020 and he required special care which was not available in the correctional home. No such circumstance is attributed to the present petitioner. It is not disputed that contraband article above commercial quantity was rightly seized from the present petitioner. Such seizure was made from the physical possession of the present petitioner. The ground, under which the Hon'ble Supreme Court granted bail in the case of **Sushanta Kumar Banik** (supra), is different from the instant case. Accordingly, we are of the view that the petitioner has not been able to rebut the statutory restriction of Section 37 of the N.D.P.S. Act.

Therefore, the prayer for bail is rejected.

We are told that the Trial Court has framed charge in 2019 but the trial could not completed during last three years. Therefore, learned Trial Judge is specifically requested to conclude hearing of the case within six months from the date of communication of this order.

With the above direction, the instant application for bail being CRM (NDPS) 1260 of 2022 is thus rejected.

(Bibek Chaudhuri, J.)

(Biswaroop Chowdhury, J.)