

07.11.2022
Sl. No.16
akd
[Rejected]

C. R. M. (NDPS) 1268 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Airport Police Station Case No.444 of 2021 dated 29.11.2021 under Sections 21(c)/28/29 of the NDPS Act.

And

In Re: ***Jaber Ali Shaikh***

... .. Petitioner

Mr. Rudra Chatterjee
Mr. Srinjoy Sengupta
Mr. S. Nisan

... .. for the petitioner

Mr. Madhusudan Sur .. Id. Addl. Public Prosecutor
Mr. Dipankar Pramanick

... .. for the State

It is submitted on behalf of the petitioner that the alleged recovery from his residence is in violation of Section 41 of the NDPS Act. It is further submitted search warrant was illegally procured. Petitioner relies on the decisions of the Apex Court in ***V.S. Kuttan Pillai vs. Ramakrishnan & Anr.***¹ and ***State of Punjab vs. Balbir Singh***² respectively in this regard.

Learned Additional Public Prosecutor disputes such fact. He submits initially 3 kgs. of *Heroin* was recovered from a Scorpio vehicle. Pursuant to the statements of co-accuseds, petitioner was arrested. On his leading statement, recovery of narcotic i.e. 1.037 kgs. of *Heroin* above commercial quantity was made from his residence between 14:15 hrs. to 15:15 hrs. i.e. prior to sunset. Such recovery was witnessed by independent persons and seizure memo was duly prepared. In view of the aforesaid circumstances, statutory

¹ AIR 1980 SC 185

² (1994) 3 SCC 299

requirements of NDPS Act have been duly complied with and the authorities cited are factually distinguishable.

We have considered the materials on record. Initially 3 kgs. of *Heroin* was seized from a vehicle in a public place which attracts Section 43 of the NDPS Act. Subsequent seizure from the residence of the petitioner was made pursuant to his leading statement recorded during investigation. Such seizure was made from his residence in the afternoon and would not attract the mandatory requirements of sub-section (2) of Section 42 of the NDPS Act.

It is strenuously argued that search authorisation under sub-section (2) of Section 41 of the NDPS Act is illegal.

We are not impressed by such submission. Recovery was made from the residence of the petitioner between 14:15 hrs. to 15:15 hrs. i.e. prior to sunset. In this backdrop, power to effect search and recovery may be traced to sub-section (1) of Section 42 of the NDPS Act. In this backdrop, legality of the search authorisation obtained becomes academic. Moreover, such plea would not *per se* vitiate recovery unless prejudice is demonstrated and its impact requires to be thrashed out in the light of the entire evidence on record during trial.

In view of the aforesaid circumstances and in the light of the 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**.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

