

CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI

21.04.2022
Item no.52
Ct.1
AK

CRM (NDPS) 60 of 2022

In Re:- An application for bail under section 439 of the Code of Criminal Procedure, 1973 in connection with New Jalpaiguri Police Station Case No.917 of 2021 dated 09.08.2021 under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances, Act, 1985.

And

In the matter of:- Shital Kumar Ray alias Shital Kr. Roy alias Shital Ray ... Petitioner

Mr. Janardhan Periwal

.....for the petitioner

Mr. Arun Kumar Sarkar
Mr. Sourav ganguly

.. for the State

The contention of learned counsel appearing for the petitioner is that the petitioner was entitled to statutory bail under the N.D.P.S Act, 1985. Counsel submits that the 180 days' period expired on 05.02.2022 and an order was passed by the Special Court on 19.01.2022 fixing the matter on 08.02.2022. Counsel also places an order passed by the court on 07.02.2022 allowing the application for extension filed by the Public Prosecutor and rejecting the application for statutory bail filed on behalf of the petitioner. Counsel relies on several decisions including an order dated 25.03.2021 passed by a co-ordinate Bench in C.R.M. 174 of 2021.

Learned counsel appearing for the State relies on the fact that the application for extension of detention was made before the expiry of 180 days and further that the Report of the Public Prosecutor states the reasons as to why the application for extension was necessary in the facts of the case.

Upon considering the submissions of the learned counsel for the parties, it is evident that the matter relates to section 36A (4) of the NDPS Act read with the proviso. Under the said provision, the maximum period of detention is 180 days. The proviso makes it clear that the outer limit of 180 days can be extended by an additional and final period of 1 year on the satisfaction of the following conditions :

- i) The Public Prosecutor must file a Report.
- ii) The Report must clearly indicate the progress of the investigation.
- iii) The Report must also indicate compelling reasons which require the extension of the detention of the accused.

We also rely on the decision of the Supreme Court in *Sanjay Kumar Kedia vs Intelligence Officer, Narcotics Control Bureau; (2009) 17 SCC 631* which referred to compliance of the conditions in section 36A (4) of the N.D.P.S. Act.

In the present case, the 180 days was due to expire on 05.02.2022. Although the application for extension was filed within the statutory period, the Special Court by its order dated 19.01.2022, fixed the matter for extension on 08.02.2022 which was beyond the statutory period of 180 days. There is no

justifiable reason for fixing the date for considering the extension application on 08.02.2022 when even the Report of the Public Prosecutor stated in the last line that the statutory period would expire on 05.02.2022. Further, when the matter was taken up 07.02.2022, the Special Court allowed the extension application of the Public Prosecutor one day before the date fixed for hearing of the same and rejected the petitioner's application for statutory bail. The order was made 2 days after the expiry of the statutory time limit and made retrospective with effect from 05.02.2022. In our considered view this could not have been done by the Special Court in view of the statutory time period fixed under section 36A (4) of the N.D.P.S Act read with the proviso.

The above facts persuade us to accept the contentions made on behalf of the petitioner and hold that the petitioner has been able to rebut the statutory restriction under section 37 of the N.D.P.S. Act.

We should also clarify that the decisions of two co-ordinate Benches in C.R.M. 174 of 2021 and C.R.M. 146 of 2021 have no application in the present case since the said cases were limited to paragraph 3 of *Hussainara Khatoon vs. Home Secretary, State of Bihar, Patna reported at (1980)1 SCC 108* and paragraph 25.3 of *M. Ravindran -Vs- Directorate of Revenue Intelligence; (2021) 2 SCC 485*. The point of difference between the two decisions was whether the accused in custody is entitled to statutory bail under section 36A (4) of the N.D.P.S. Act without an application made in that respect within the statutory time frame. Since the petitioner

in the present case has made an application for statutory bail, the two decisions which have been referred to the Hon'ble Chief Justice for being decided by a larger Bench, are not relevant to the present matter.

C.R.M. 60 of 2022 is accordingly allowed. The petitioner shall be entitled to bail for the reasons as stated above.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- (rupees ten thousand only) with two sureties each of like amount, one of who must be local to the satisfaction of the learned Judge, Special Court (Under N.D.P.S. Act), 2nd Court, Jalpaiguri. The petitioner shall make himself available on every date of hearing before the concerned Police Station as and when required. The petitioner shall not leave the area of local Police Station only upon condition being granted for such. The petitioner shall not intimidate any witnesses and tamper with any evidence in any manner whatsoever.

CRM (NDPS) 60 of 2022 is accordingly allowed and disposed of.

(Kesang Doma Bhutia, J.)

(Moushumi Bhattacharya, J.)

