

**CIRCUIT BENCH OF CALCUTTA HIGH COURT  
AT JALPAIGURI**

13.05.2022  
Court No.01  
Item No.20  
Avijit Mitra

**CRM (NDPS) 134 of 2022**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure;

And

**In Re: Rajufa Bibi**

...Petitioners

Mr. Hillol Saha Poddar,  
Mr. Sayantan Bhowmik,  
Ms. Mousumi Das

....For the petitioners

Mr. Arun Kumar Sarkar,  
Mr. Biswarup Roy

...For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Dinhata Police Station Case No.43 of 2021 dated 28.01.2021 under Section 20b(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Poddar, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. He was arrested on 28<sup>th</sup> January, 2021 and there was no independent witness in the arrest memo. He has approached this Court for the first time through the present application.

He argues that the petitioner was arrested on 28<sup>th</sup> January, 2021 and was remanded on 29<sup>th</sup> January, 2021. The period of 180 days expired on 28<sup>th</sup> July, 2021. Prior thereto, an application was filed for extension of time for completion of such investigation in terms of Section 36A(4) of the N.D.P.S. Act. Upon considering the same on 23<sup>rd</sup> July, 2021, the learned Court below was pleased to

extend such time for a period of one month. The said period of one month expired on 27<sup>th</sup> August, 2021 and as such, the petitioner submitted an application for statutory bail along with a put up petition but his prayer was mechanically turned down by the learned Court below on 31<sup>st</sup> August, 2021.

According to Mr. Poddar, the chargesheet was filed *vide* memo no.366 of 2021, dated 29<sup>th</sup> August, 2021, i.e. after expiry of the extended period for completion of investigation on 27<sup>th</sup> August, 2021. In view thereof, an indefeasible right accrued in favour of the petitioner to avail statutory bail.

Mr. Roy, learned advocate appearing for the State, however, submits that there is no infirmity in the order dated 31<sup>st</sup> August, 2021, inasmuch as prior to hearing of the petitioner's application for statutory bail, the chargesheet was submitted.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

It appears that the chargesheet was prepared *vide* memo dated 29<sup>th</sup> August, 2021 and was filed in GRO on 30<sup>th</sup> August, 2021 and was placed before the Court while hearing of the petitioner's application for statutory bail.

In the order dated 31<sup>st</sup> August, 2021 passed by the learned Court below it has, *inter alia*, been observed as follows:

*"Received the C.S. vide No.366/21, dt. 29.08.21 against accused Rajufa Bibi for the offence punishable u/s 20(b)(ii)(C) of the NDPS Act from Sessions GRO which was filed on 30.08.21. On that day, the court was closed due to holiday".*

The petitioner was remanded to judicial custody on 29<sup>th</sup> January, 2021 and hence the mandatory period of 180 days

prescribed for filing the final report under Section 167(2) of the Code of Criminal Procedure (excluding the date of remand) was till 28<sup>th</sup> July, 2021. The extended period of 30 days for completion of investigation expired on 27<sup>th</sup> August, 2021.

From the above sequence it thus appears that admittedly the chargesheet was prepared on a date i.e. 29<sup>th</sup> August, 2021, which is subsequent to expiry of the period of 180+30 days on 27<sup>th</sup> August, 2021. It thus appears that the petitioner's prayer for statutory bail was mechanically rejected.

The right of statutory bail is not merely a statutory right but is part of the procedure established by law under Article 21 of the Constitution of India. *[See the judgements delivered in the cases of M. Ravindran Vs. Directorate of Revenue Intelligence reported in 2020 0 Supreme 627 and Bikramjit Ghosh ...reported in 2020 0 Supreme SC 582].*

Applying such proposition of law to the facts of this case, we are of the opinion that the petitioner is entitled to the bail.

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 of like amount each, one of whom must be local, to the satisfaction of the concerned learned Special Judge (under the Narcotic Drugs and Psychotropic Substance Act, 1985) cum Additional Sessions Judge, 1<sup>st</sup> Court, Cooch Behar with a further condition that the petitioner, who is a housewife, shall not leave the jurisdiction of Dinhata Police Station until further orders save and except for attending the learned trial court below on all the dates as specified for hearing.

It is further directed that the petitioner shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

The application for bail being CRM (NDPS) No.134 of 2022 is, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

**(Ajoy Kumar Mukherjee, J.)**

**(Tapabrata Chakraborty, J.)**