

14.06.2022
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Ct. No. 01
KAUSHIK
Allowed

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

C.R.M. (NDPS) 144 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Mathabhanga** Police Station Case No. **140** of **2018** dated **10.05.2018** under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In Re : Rabindar Singh

..... petitioner

Mr. Jagriti Mishra
Mr. Sabir Ali
Mr. Subham Gupta
Mr. Debayan Goswami

.....for the petitioner

Mr. Arun Kumar Sarkar
Mr. Biswarup Roy

....for the State

The application for bail is taken up for consideration subsequent to the order dated June 27, 2022.

Report called for by the order dated June 7, 2022 filed in Court be taken on record.

It appears from such report that on November 12, 2018, a bail petition was filed by the petitioner and that the charge-sheet was filed by the police 'simultaneously'.

Learned advocate appearing for the petitioner submits that, the application for bail was prior in point of time than the filing of the charge-sheet. He refers to the order no. 14 dated October 4, 2018 and the order no. 15 dated November 12, 2018 of the Jurisdictional Court. He submits that, on a conjoint

reading of the two orders, it is apparent that, the application for bail was filed prior in point of time and that too on the basis of the put up petition. Thereafter, when the bail application was under consideration, the learned Public Prosecutor submitted a prayer for extension of time to complete the investigation. Subsequently, the learned Public Prosecutor did not press such application for extension. The Court recorded that the Investigating Officer submitted a charge-sheet against the petitioner. Therefore, on the chronology of the events recorded in the order no. 15 dated November 12, 2018, it is apparent that, the application for bail along with the put up petition was filed prior in point of time than the application for extension of time and the charge-sheet.

Relying upon **(2021) 2 SCC 485 (M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence)**, learned advocate appearing for the petitioner submits that, since the application for bail was prior in point of time an indefeasible right to default bail occurred in favour of the petitioner. The application for bail was submitted on the 181st day with no charge-sheet and application for extension of charge-sheet being filed prior to the application for bail.

Learned advocate appearing for the State submits that, commercial quantity of narcotic was seized from the joint possession of the petitioner. According to him, since, charge-sheet was submitted simultaneously along with application for bail, the question of granting default bail to the petitioner does not arise.

In M. Ravindran (supra), the application for bail was made prior in point of time than the charge-sheet submitted. In the facts of that case, therefore, the Hon'ble Supreme Court observed that, an indefeasible right in the favour of the accused accrued in obtaining statutory bail.

In the facts of the present case, two orders of the Jurisdictional Court are relevant. They being order no. 14 dated October 4, 2018 and order no. 15 dated November 12, 2018.

By the order no. 14 dated October 4, 2018, the matter was posted to November 14, 2018 for production of report of the Investigating Officer. On November 12, 2018, the matter was put up before the Jurisdictional Court on the basis of the put up petition filed on behalf of the petitioner on consideration of an application for bail of the petitioner. The application for bail was on the ground of statutory default of the Investigating Authority in submitting charge-sheet within the prescribed period.

The petitioner was arrested on May 10, 2018. 180 days from the date of the arrest of the petitioner expired on November 10, 2018. November 10, 2018 was the 2nd Saturday. November 11, 2018 was a Sunday. Therefore, the petitioner filed an application for statutory bail on November 12, 2018 being the first date after the expiry of the time period for filing the report.

Although, the report of the Jurisdictional Court called for by the order dated June 6, 2022 states that the application for

bail and the charge-sheet were filed simultaneously on November 12, 2018, the judicial order bearing nos. 14 and 15 of the Jurisdictional Court establishes that, the application for bail was filed prior in point of time.

In such circumstances, we are of the view that the petitioner makes out a case for grant of statutory bail. Consequently, we grant bail to the petitioner.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the **learned Additional Sessions Judge, 1st Court under NDPS Act, Coochbehar**, subject to the condition that the petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel the bail of the petitioner without further reference to this Court.

The application for bail is, accordingly, allowed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

