

13.05.2022
Item no.29
Court No.01
Avijit Mitra

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

CRM (NDPS) 165 of 2022

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

And

In Re : Asidul Sekh

.... petitioner

Mr. Subhasish Misra,
Mr. Swarup Das

....for the petitioner

Mr. Sourav Ganguly

..... for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Sahebganj Police Station Case No.517 of 2021 dated 19.10.2021 under Section 20 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Misra, learned advocate appearing for the petitioner submits that in the F.I.R. lodged by the BSF personnel there is no statement that contraband substance above commercial quantity was seized from the possession of the petitioner and as such it cannot be said that the petitioner was involved in the alleged offence. He further submits that in the re-seizure list annexed at page 10 there is also no mention that the contraband substance was seized from possession of the petitioner. The petitioner has already suffered incarceration

since 19th October, 2021 and there is no possibility towards conclusion of the trial in the near future.

Mr. Ganguly, learned advocate appearing for the State, however, opposes the petitioner's prayer and submits that the petitioner was trying to smuggle 50 bottles of Phensedyl through gate no.14 Border Outpost as would be explicit from the contents of the complaint lodged by the BSF personnel. The BSF personnel handed over the petitioner to the police authorities and the members of the raiding party signed the re-seizure list. There had thus been recovery of contraband substance above commercial quantity from the possession of the petitioner and the statutory restrictions are clearly attracted.

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

The discrepancy as pointed out on behalf of the petitioner would certainly be analysed at the stage of trial and such discrepancy alone is not sufficient for this Court to come to the conclusion that the entire prosecution is false, at this stage.

Prima facie, there had been recovery of contraband substance above commercial quantity from the possession of the petitioner and as such the statutory restrictions under Section 37 of the NDPS Act are clearly attracted. In view thereof, we are not inclined to exercise any discretion in favour of the petitioner and his prayer for bail is refused at this stage.

The application for bail CRM (NDPS) 165 of 2022 is dismissed.

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.)