

28.02.2022

COURT : 01
 ITEM : 03
 MATTER : 439
 STATUS : REJECTED
 TRANSCRIBER : nandy

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

CRM 917 of 2021

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed on December 10, 2021 in connection with Birpara Police Station Case No. 87 of 2020 dated 23.06.2020 under Sections 21(c) of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of : **Bieky Tamang @ Biki Tamang**

...Petitioner

Mr. Jaydeep Kanta Bhowmik, Advocate

Ms. Debi Sarkar, Advocate

...for the Petitioner

Mr. Aditii Shankar Chakraborty, Learned A.P.P.

Mr. Biswarup Roy, Advocate

...for the State

The petitioner is seeking bail in connection with Birpara Police Station Case No. 87 of 2020 dated 23.06.2020 under Sections 21(c) of the Narcotic Drugs and Psychotropic Substances Act.

Showing agony and anguish over the delayed detention in connection with the charges under the Narcotic Drugs & Psychotropic Substances Act, the petitioner has projected his case on the plea of violation of principles of natural justice as well as right to represent before the Court of law.

Indubitably the petitioner was apprehended on June 14, 2020 for alleged possession for the contraband above the commercial quantity and because of the rigour of Section 37 of the NDPS Act, he was not released on bail. Because of the lethargic and dormant attitude of the prosecuting side having not completed the investigation within the statutory period

provided thereof, the petitioner is impinging their action and the order passed by the Special Court when an application for extension was considered and was subsequently allowed.

Our attention is drawn to the order dated December 17, 2020 passed by the Special Court under the NDPS Act when an application for extension of time to complete the investigation was taken up on a put up application filed by the prosecution side. In order to impress upon us that the said order is in fact, lopsided having passed in gross violation of the principles of *audi alteram partem* and the statutory right having conferred upon the accused, there is no justification on the part of the prosecution side to keep the petitioner in custody any longer. The order dated December 17, 2020 would reveal that an application for extension of time to complete the investigation was taken out on an unnotified date and the learned lawyer of the petitioner had a notice of such course of action adopted by the prosecution side but the manner in which the submission was advanced creates a sense in the mind of the petitioner that he was not properly represented. There is authority of the said lawyer to appear on behalf of the petitioner as by that time one can presume that the power was not withdrawn.

The lawyer representing the petitioner makes a submission before the Court that he has no control over his client. It thus cannot be said that the petitioner was not given a notice nor adequately represented and whatever transpired on the said date has been reflected in the impugned order. However, on the second occasion when further extension was sought obviously the petitioner was not represented for the

reason that the said lawyer in the meantime loses his authority to appear, which created an impression in the mind of the petitioner that he was not properly represented.

The judgement of the Apex Court rendered in the case of ***Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau & Anr.*** in Criminal Appeal Nos. 2008-2009 of 2008 on August 20, 2009 ***[2010 (1) SCR 555]*** is relied upon by the petitioner in support of his contention that the right to be heard and right to be represented are inchoate rights which cannot be taken away at the fiat of the prosecution side. We notice that the judgment of the Supreme Court and finds that the pivotal issue which emerges therein relates to the role of the Public Prosecutor, more particularly, when extension is sought.

An argument was advanced that at the time of seeking an extension under clause (bb) of Section 36A of the NDPS Act, the Public Prosecutor expected to independently apply his mind to the request of the Investigating agency before submitting a report to the Court for extension of time with a view to enable the Investigating agency to complete the investigation. In the aforesaid perspective the Apex Court held:

“that the report of the Public Prosecutor is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and, therefore, there must be strict compliance of the provisions contained under clause (bb) of Section 36A of the said Act.”

Though various instances or factual sequences have been noticed by the Supreme Court but ultimately the Apex Court held that once the outer cap provided in the aforesaid

Section has elapsed because of the laches and lapses on the part of the prosecution, the right immediately accrued and such right cannot be destroyed nor whittle down on any score.

It is no doubt true that personal liberty of an individual is a fundamental right enshrined under Article 21 of the Constitution and such fundamental right can only be abridged by the established procedure of law and, therefore, it is the solemn duty of the authority to strictly follow the procedure of law as any non-adherence may invite serious consequences. The personal liberty being paramount and cannot be undermined by taking a circuitous route but equally if the authority have acted within the precincts of law, the minor infraction may not be projected upfront in the guise of violation of principles of natural justice.

The application for extension was taken out before the expiration of the statutory period. The fact remains that the chargesheet has already been submitted after completing the investigation and, therefore, it would be too late in a day to release the petitioner on such technicalities. There has been embargo created under Section 37 of the NDPS Act and the provision contained therein. The conduct of the petitioner does not instill any confidence in us to take an exception to Section 37 of the Act. However, we appreciate the agony of the petitioner in delayed disposal of the case.

We, therefore, request the learned Judge of the Special Court under the NDPS Act to take up the matter within fortnight from date, if necessary, after preponing the date already fixed and take a decision for framing of charges. The learned Judge

is further requested to expedite the trial of the case and we hope and trust that the prosecution would not delay the trial of the case unnecessarily.

The prayer for bail is **rejected**.

The application for bail being **CRM 917 of 2021** is **dismissed**.

(Harish Tandon, J)

(Rabindranath Samanta, J)