

08.07.2022.

Item No. 13

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*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE*

C.R.M. (NDPS) No. 207 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 06.07.2022 in connection with Siliguri Police Station Case No. 1227 of 2021 dated 08.10.2021 under Sections 21(C)/22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: **Sanil Gowala & Anr.** ...petitioners

Mr. Tapas Kumar Ghosh,
Mr. Tanmoy Chudhury. ...For the petitioners

Mr. Aditi Shankar Chakraborty, Id. A.P.P.
Mr. Nilay Chakraborty,
Mr. Ujjwal Luksom.For the State

The application for bail is moved on the following grounds:

- (a) That the entire case against the petitioners is fabricated and an afterthought.
- (b) The petitioners went to the Police Station to surrender in respect of another case under Section 392 of the Code of Criminal Procedure in which their family members have been implicated and were illegally taken into custody.
- (c) The NDPS case has been foisted on them by the authorities with a view to primarily harass them.
- (d) The commercial name of codeine mixture seized from the possession of the petitioners is not found manufactured in this country.

(e) The chemical certificate based on which the charge-sheet has been prepared has been signed by a person not authorized under Section 293 of the Code of Criminal Procedure.

(f) The rickshaw in which the petitioners were found with the contraband has neither been seized nor has the Rickshaw puller's name transpired as a witness.

There are other grounds canvassed by the Counsel for the petitioners.

It is now well settled that omissions as indicated by the Counsel for the petitioners in the charge-sheet and in the procedure, if at all sustainable are not so grave that would completely wash out the case of the prosecution.

Oral evidence of the persons, who had signed the chemical report, can always be taken to prove the substance seized. Section 293 of the Code of Criminal Procedure deals only with the category of reports that can be accepted as evidence by the Trial Court. The prosecution can, however, rely upon any expert's evidence and any other materials that may be brought on record with the leave of the Trial Court.

Mere non-seizure of the Auto Rickshaw or not naming the Rickshaw puller as a witness of the prosecution in the charge-sheet cannot be fatal to the trial. Such arguments are based on a defence in course of the trial.

In the aforesaid circumstances, this Court is not inclined to entertain the application for bail at this stage.

It is submitted that the charges have been framed and trial has commenced and PW-1 did not turn up on the date of evidence.

It is ordered that prosecution shall ensure that all the witnesses are examined successively after their respective cross-examination. The trial shall be concluded as expeditiously as possible.

It is made absolutely clear that the observations made hereinabove are only for the purpose of the instant application under Section 392 of the Code of Criminal Procedure. The Trial Judge shall not be influenced by the aforesaid order and shall proceed independently in accordance with law in the matter.

C.R.M. (NDPS) No. 207 of 2022 is, thus, disposed of.

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

(Ananda Kumar Mukherjee, J.) (Rajasekhar Mantha, J.)