

Circuit Bench of Calcutta High Court at Jalpaiguri

CRM 1130 of 2021

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Dinhata Police Station** Case No. 72 **of 2021** dated **19.02.2021** under Sections **20(b)(C)/21(c)** of the NDPS Act.

- A n d -

In the matter of : Nannu @ Nanu Hossain & Anr.

.... Petitioners.

Mr. M. Mukherjee,
Mr. S. Ali,
Mr. S. Mondal,

... For the Petitioners.

Mr. Aditi Sankar Chakraborty, Ld. APP
Mr. S. Ganguly,

... For the State.

The petitioners were taken into custody on charges under various provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 on February 19, 2021. 180 days expired on August 18, 2021. It appears that the learned Court below, on an application filed by the State, extended the time for filing of charge-sheet by 30 days. That means, the charge sheet was required to be filed by September 17, 2021.

The petitioners applied for statutory bail on September 20, 2021. The Learned Court below rejected that application since apparently, during the course of hearing of that application, the charge sheet was submitted. Being aggrieved, the petitioners have approached us.

The law is quite clear that upon expiry of the statutory period of 180 days in case of a NDPS matter, the accused who is in

custody acquires an indefeasible right to be enlarged on bail. Of course, the Court can extend the time period for filing charge-sheet by six months. In this case, the State was required to file charge-sheet initially by August 18, 2021. However, the Court extended the time period in exercise of power under Section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act till September 17, 2021. Upon expiry of September 17, 2021, the petitioners were entitled, as a matter of right, to be enlarged on bail. Every minute's detention after September 17, 2021 was illegal. In this connection one may refer to a decision of a Coordinate Bench of this Court rendered in CRM 1105 of 2019 (**The State of West Bengal-vs.-Dharam Paswan**) and also the Apex Court decision in **M. Ravidran-vs.-The Intelligence Officer**, reported in **(2020) SCC Online SC 867**.

Once the petitioners exercise their right to obtain statutory bail by filing an application, subsequent filing of charge sheet cannot defeat such right. This is the law laid down by various courts.

In the present case, it would appear from the order dated September 20, 2021 passed by the Learned Additional Sessions Judge, 1st Court, Cooch Behar (NDPS) that while the application of the petitioners for statutory bail was being heard, charge sheet was sought to be submitted. The learned Judge ought not to have rejected the petitioners' prayer for that reason. Filing of charge sheet while an application for statutory bail was being heard, was of no consequence and could not have any adverse effect on the right of the petitioners to obtain statutory bail.

In view of the aforesaid, we allow the present application for bail of the petitioners.

Accordingly, we direct that the petitioners, namely, **Nannu @ Nanu Hossain** and **Arsad Ali** shall be released on bail upon furnishing a bond of Rs. 25,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Judge, Special Court under the NDPS Act, Cooch Behar and on further conditions that they shall not leave the jurisdiction of the concerned police station and shall report to the Officer-in-Charge of the concerned police station once in a fortnight until further orders. The petitioners 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 petitioners fail to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioners' bail in accordance with law without further reference to this court.

The application for bail is, accordingly, allowed.

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

(**Aniruddha Roy, J.)**

(**Arijit Banerjee, J.)**