

10.01.2022
Item no.34.
Court No.1.
AB
(Allowed)

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
(Via Video Conference)**

CRM No. 1132 of 2021

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Cooch Behar Kotwali Police Station Case No.572 of 2019 Dated 21.8.2019 under Sections 20(b)(ii)(C)/29 of the NDPS Act

And

In the matter of: Jay Babu Kumar & Anr.

.....Petitioners.

Mr. Moyukh Mukherjee,
Mr. Sabir Alifor the Petitioners.

Mr. Nilay Chakraborty,
Mr. Sagnik Sankar Sikdarfor the State.

On August 21, 2019, the petitioners were taken into custody on charges under Sections 20(b)(ii)(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. They were produced before the Special Court on August 22, 2019. 180 days expired on February 18, 2020, excluding the date of production.

On February 19, 2020, the petitioners applied for statutory bail, 180 days having expired on the day before. The Special Court in its order dated February 19, 2020 recorded that on that day charge sheet was submitted by the Investigating Officer. The Public Prosecutor argued that since charge sheet was already submitted, bail could not be granted in view of the

restrictions provided under Section 37 of the NDPS Act. The learned Special Court accepted such submission and dismissed the petitioners' prayer for statutory bail. Being aggrieved, the petitioners are before 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, if charge sheet has not been submitted in the meantime. Of course, the Court can extend the time period for filing charge sheet by six months. In this case, the Investigating Officer was required to file charge sheet by February 18, 2020. Upon expiry of February 18, 2020, the petitioners were entitled, as a matter of right, to be enlarged on bail, since charge sheet had not yet been filed. Every minute's detention after February 18, 2020, was illegal. In this connection, one may refer to a decision of a Coordinate Bench of this Court rendered in **CRM No.1105 of 2019 (State of West Bengal Vs Dharam Paswan)** and also the Apex Court's decision in **M. Ravidran Vs The Intelligence Officer reported in (2020) SCC Online SC 867.**

Once the petitioners exercised 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, the charge sheet was filed on the 181st day which is impermissible. The learned Judge ought not to have rejected the petitioners' prayer for statutory bail. Filing of charge sheet when an application for statutory

bail had already been filed, 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, **Jay Babu Kumar** and **Pritam Kumar @ Pratim Kumar** 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 at Cooch Behar and/or the relevant Court in Charge thereof, and on further conditions that the petitioners 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 being C.R.M. No.1132 of 2021 is, thus, 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.)