

15.09.2022

Item No.7

Ct.No.01

F.B

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

CRM (NDPS) 282 of 2022

In Re: An application for bail under Section 439 of Cr.P.C in connection with N.D.P.S. Case No. 02 of 2022 arising out of NJP Police Station Case No. 1343 of 2021 dated December 24, 2021 under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

In the matter of : **Chandan Roy**

... Petitioner.

Ms. Suman Sehanabis (Mandal)
Mr. Alok Sah

... For the Petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Aniruddha Biswas

... For the State.

Party/parties is/are represented in the order of their name/names as printed above in the cause-title.

This is an application for bail in connection with NJP Police Station Case No. 1343 of 2021 dated December 24, 2021 under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 corresponding to N.D.P.S. Case No. 02 of 2022 pending before the Learned Judge, Special Court (NDPS), 1st Court at Jalpaiguri.

Learned Counsel for the petitioner submits that the petitioner was arrested by the police on the 24th of December, 2021 and after the arrest the petitioner was produced before the Ld. Magistrate and sent to the correctional home. Since then the petitioner is in the correctional home.

Learned Counsel for the petitioner submits that after the completion of the statutory period i.e. till 23rd June, 2022, the police had not submitted Charge Sheet and, accordingly, on 27th June, 2022, the petitioner had filed an application for bail but the same was rejected.

After the bail was rejected, the prosecution had filed an application for extension of time for completion of investigation and the said application was taken up for hearing only in the month of August, 2022 and the prayer for extension of time for investigation was extended for a further period of 90 days.

Learned Counsel for the petitioner submits that the Learned Court below failed to appreciate that when the petitioner has filed an application for bail on completion of the statutory period there was no application for extension of time and no Charge Sheet was filed and thus the petitioner was entitled to get bail but the Learned Judge has rejected the bail application.

Learned Counsel for the State submits that while rejecting the bail application, the Learned Judge has not specified whether the statutory period was over or not and when the prosecution has filed an application for extension of time, the Learned Judge had considered the extension application and, accordingly, the extension

was granted and thus the petitioner cannot claim right of bail once the extension was granted.

Considered the rival submissions of the respective parties.

Perused the Case Diary and the materials on record.

Admittedly, on the 27th of June, 2022 when the petitioner had filed an application for bail, the statutory period was over and there was no Charge Sheet filed by the prosecution.

Paragraph 25 of the judgment reported in (2021) 2 SCC 485 (In Re: M. Ravindran –Vs- Intelligence Officer, Directorate of Revenue Intelligence) is quoted below for the benefit of this discussion.

“25. Therefore, in conclusion:

25.1. Once the accused files an application for bail under the proviso to Section 167(2) he is deemed to have “availed of” or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filling of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filling of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

25.3. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the Cr.P.C.”

Considering the submissions and the judgment referred above, this Court finds that the Learned Court below has not considered that when the petitioner has filed an application for bail and there was no Charge Sheet filed as well as the statutory period was over, the Learned Court below ought to have granted bail instead of rejecting the application.

Accordingly, this Court finds that the petitioner is entitled to get bail.

The prayer for bail of the petitioner is **Allowed**.

Accordingly, We direct, the petitioner shall be released on bail upon furnishing a bond of Rs.40,000/- (Rupees Forty Thousand only) with two sureties out of which one must be local surety of like amount each, to the satisfaction of the Learned Judge, Special Court (NDPS), 1st Court at Jalpaiguri and on condition that the petitioner shall meet the Officer-in-Charge of NJP P.S. once in a week and shall appear before the Learned Trial Court on each and every date of trial and on further condition that the petitioner shall not intimidate the witnesses nor shall hamper or tamper with the evidence.

In case non-compliance of the condition as mentioned above, the bail granted to the petitioner shall automatically be cancelled.

CRM (NDPS) 282 of 2022 is **disposed of** accordingly.

All parties are to act on a server copy of this order duly collected from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)