

28.02.2022
Court No.01
Item No. 11
Saswata
(rejected)

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

**CRM 1291 of 2021
(Via Video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection Pradhannagar Police Station Case No. 167 of 2021 dated 21.03.2021 under Sections 21(C)/22(C)/29 of the NDPS Act.

And

In Re: **Shiv Kumar & anr.**

Petitioners

Mr. Akhil Biswas
Mr. Sudhindra Das

For the Petitioners

Mr. Aditi Sankar Chakraborty, APP
Mr. Sourav Ganguly

For the State

This is an application for bail at the behest of two co accused who have been apprehended in connection with Pradhannagar Police Station Case No. 167 of 2021 dated 21.03.2021.

The petitioners are harping on the order no. 17 dated 23/09/2021 to emphasize that charge sheet was filed beyond the statutory period of time provided there for and in fact, the application for bail was filed prior in time.

Having made such submission, we enquired from the learned advocate appearing for the petitioner the date of detention and the period within which the investigating agency has filed the final report. According to him, the period expired on 19/09/2021 and it would reveal from the impugned order that the prosecution has contended that the charge sheet was filed on 09/09/2021, which has been accepted by the Trial Court and would be evident from the order no. 17 dated 23/09/2021. According to him the

application for statutory bail was filed on 23/09/2021 which was subsequently misplaced and, therefore, the available right accrued to the petitioner has been denied.

After perusing the order no. 17 dated 23/09/2021, we find that the charge sheet was filed on the said date and the Learned Sessions Judge further recorded that no application for bail was filed by the accused persons. The Court, after taking notice of such fact, proceeded to dismiss the application for bail filed by the petitioners on such score that the charge sheet was filed before the application for bail could be taken out by the petitioners.

It is no doubt true that the right to pray bail on default of the prosecution not completing the investigation within the statutory period, is an accrued right but in absence of any assertions of such right, the petitioners cannot claim such right being an inviolable one. At last, the record would reveal that the charge sheet was submitted before an application for bail was filed by the petitioners and, therefore, we do not find any ground for taking exception to Section 37 of the NDPS Act.

In view of the above, the prayer for bail is *rejected*.

The application for bail being CRM 1291 of 2021 is accordingly dismissed.

(Harish Tandon, J)

(Rabindranath Samanta, J)