

**MAT 128 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2023**

**Sk Akbar
Vs.
The State of West Bengal & Ors.**

Mr. Malay Bhattacharya
Mr. D. Dutta

... ... for the appellant

Mr. Nilotpal Chatterjee
Mr. Debopriya Chatterjee

... ... for the State

Since there is a delay of 75 days in filing the appeal, therefore CAN 1 of 2023 has been filed seeking condonation of delay in filing the appeal.

Considering the explanation in the application and submission of the learned counsel for the parties, we are of the opinion that the delay has properly been explained and the same was unintentional, and therefore CAN 1 of 2023 is allowed and delay in filing the appeal is condoned.

In this intra-court appeal writ petitioner has challenged the order of the learned Single Judge dated 27th September, 2022 passed in WPA 16143 of 2022 whereby the writ petition had been disposed of with certain observation.

The appellant is an accused in a criminal case for offence under the provisions of NDPS Act and he had filed the writ petition seeking various reliefs including the relief of compensation for illegal detention. The petition

has been disposed of by the learned Single Judge keeping it open to the appellant to avail the remedy under the Cr.P.C. and N.D.P.S. Act.

Submission of learned counsel for the appellant is that since the appellant has been illegally detained, therefore he is not only to be released but also entitled to compensation. In support of his submission he has placed reliance upon certain documents enclosed with the petition.

Having examined the record, we find that the learned Single Judge has already taken note of the fact that the appellant has been declined the bail. The offence was registered on 12th May, 2022 under the provisions of Section 21(C) of the NDPS Act for keeping the commercial quantity of codeine mixture. Learned Single Judge has minutely considered the entire material and has refused to exercise the jurisdiction under Article 226 of the Constitution of India. If the appellant feels that he has been falsely implicated in the NDPS case then he has a remedy to file proper petition under the provisions of the Cr.P.C. by enclosing thereof a complete material including a copy of the challan, if already filed. On the basis of the documents which are enclosed with the present writ petition a factual enquiry in exercise of Writ Jurisdiction is not permissible to reach to a conclusion that the appellant has been falsely implicated.

In such circumstances, we are of the opinion that the learned Single Judge has committed no error in refusing to exercise the jurisdiction under Article 226 of the Constitution and no case for interference in this appeal is made out.

The appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Rai Chattopadhyay, J.)