

16.02.2023
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allowed

CRM (NDPS) No. 282 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Habibpur Police Station Case No. 178 of 2022 dated 01.06.2022 under Sections 21(c)/29 of the NDPS Act.

And

In Re : Krishna Mandal @ Gobinda Mandal petitioner

Mr. Avinaba Patra
Mr. Partha Sarathi Das
Mr. Shanta Sarkar

.....for the petitioner

Mr. Sanjoy Bardhan
Ms. Baishakhi Chatterjee

..... for the State

Learned Counsel for the petitioner submits that he was illegally detained from 27th May, 2022. Immediately after his detention mother of the petitioner made a representation dated 30th May, 2022 before the Superintendent of Police, Malda, but no steps were taken on such representation. Subsequently on 2nd June, 2022 he was falsely implicated alleging recovery of narcotics. Petitioner was constrained to move a writ petition being W.P.A. No. 14299 of 2022 before this Court over this issue. He had also prayed for production of the CCTV footage from the police station in support of his defence. CCTV footage was not produced on the plea it is not available. Accordingly, he prays for bail.

Learned Counsel for the State opposes the prayer for bail. He submits a large volume of narcotics was recovered from the petitioner at the spot. He was apprehended. This would be evident from the statements of the seizing officers and seizure

memorandum. Due to lapse of time, CCTV footage could not be produced.

We have considered the materials on record. Recovery of narcotics from the petitioner was under most suspicious circumstances. It is contended he was illegally detained at the police station on 27th May, 2022. On 30th May, 2022 his mother made a representation to the Superintendent of Police, Malda, alleging illegal detention. On 2nd June, 2022 an application was made before the Inspector of Police of the police station concerned for supply of CCTV footage between 26.05.2022 to 02.06.2022. No response came from the aforesaid authorities. On the other hand, on 02.06.2022 he was implicated in the present case. Recovery from the petitioner was made from a public place. No independent witnesses are present at the time of alleged recovery. We are conscious that non-joining of independent witnesses *per se* would not render the recovery invalid. However, the attending circumstances particularly the complaint of illegal detention made by the mother of the petitioner prior to the alleged recovery casts serious doubt with regard to the said recovery. Non-joining of independent witnesses is also an additional circumstance which adversely impacts the credibility of recovery. Though prayer was made on 02.06.2022 to supply CCTV footage of the police station between 26.05.2022 to 02.06.2022, belatedly plea has been taken footage had not been preserved. No explanation is forthcoming why the said footages were not preserved. This also gives rise to an adverse inference against the recovery. The cumulative impact of the aforesaid circumstances clearly show petitioner has been able

to rebut the statutory restrictions under Section 37 of the NDPS Act and is entitled to bail.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act, Malda, subject to the condition that the petitioner 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 petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without further reference to this Court.

The application for bail is, accordingly, allowed.

We emphasize that these observations were for disposal of the case and will not have any bearing at the subsequent stage of the proceeding which shall be decided independently and in accordance with law.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)