

05.06.2023.
04.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 977 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No.11 of 2021 arising out of English Bazar P. S. Case No.73 of 2021 dated 15.01.2021 under Sections 21(c)/29 of the NDPS Act.

In the matter of : Prasenjit Ghosh @ Prosenjit Ghosh.
.... Petitioner.

Mr. M. Mukherjee,
Mr. A. Patra,
Mr. D. Kundu.

...for the Petitioner.

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.

...for the State.

Report filed on behalf of the State be kept on record.

Order dated 15.07.2021 extending statutory period of detention in terms of proviso of Section 36A (4) of the NDPS Act has been assailed.

Learned Advocate for the petitioner submits the Special Court was not satisfied with the reasons given by the Public Prosecutor in the report seeking extension. However, noting pandemic situation was prevailing in the country at the material point of time, statutory bail was denied.

We have considered the materials on record. Petitioner was arrested with 300 grams of brown sugar i.e. heroin and cash. He was produced before the Special Court on 15.01.2021. Statutory period of detention i.e. 180 days was to expire on 14.07.2021. On 12.07.2021, Public Prosecutor submitted report seeking extension of the period of detention.

Though learned Judge was not satisfied with the reasons given in the report noting the pandemic conditions prevailing in the country, the period of detention was extended and the bail prayer was rejected.

Aggrieved by the said order, petitioner has approached this Court seeking bail.

We have considered the materials on record. Reasons given by the Public Prosecutor in his report seeking extension did not find favour with the Special Judge. Solely on the ground of pandemic conditions prevailing in the country, he extended the period of detention. It may be pertinent to note in ***S. Kasi Vs. State through Inspector of Police, Samaynallur Police Station, Madurai District***¹, the Hon'ble Supreme Court observed that the lockdown or prevailing pandemic conditions would not deny the fundamental right of accused to seek statutory bail. It is also relevant to note no complete lockdown had been imposed in the State of West Bengal in 2021 though there were certain restrictions during the said period.

In this backdrop, we are of the considered opinion the restriction due to Covid-19 by themselves cannot be a ground to extend the period of detention unless the Court is satisfied that progress in investigation necessitated such detention.

Under such circumstances, we are of the opinion the prayer for statutory bail of the petitioner was unjustly turned down. Petitioner had availed and pursued his right upto this

¹ 2020 SCC Online SC 529

Court prior to the submission of charge sheet. Hence, he is entitled to release on statutory bail.

Accordingly, the petitioner viz., Prasenjit Ghosh @ Prosenjit Ghosh 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 the NDPS Act-cum-Additional Sessions Judge, 4th Court, Malda subject to condition that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

This application for bail is, thus, disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)