

16.05.2023

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Allowed

C.R.M. (NDPS) No. 956 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Manikchak Police Station Case No. 617 of 2022 dated 22.10.2022 under Section 21(c)/29 of the N.D.P.S. Act.

And

In Re : Ranjan Rabidas petitioner

Mr. Amitabha Karmakar

Mr. Arup Kumar Bhowmick

.....for the petitioner

Mr. Ranadeb Sengupta

.....for the State

Learned Counsel for the petitioner prays for statutory bail. It is submitted by him that he had prayed for statutory bail after expiry of 180 days and, therefore, the learned Judge ought to have enlarged him on statutory bail.

Learned Counsel for the State opposes the prayer for bail.

We have considered the materials on record. Petitioner was arrested on 22nd October, 2022 and remanded to custody on 23rd October, 2022. On 18th April, 2023 learned Public Prosecutor made an application for extension of period of detention in terms of proviso to Section 34(a)(iv) of the NDPS Act. On 181st day i.e. on 21st April, 2023 petitioner prayed for statutory bail. During hearing of the bail application it came to light that in the afternoon charge-sheet had been filed. Learned

Judge was of the view that charge-sheet had been filed on the 180th day i.e. within the statutory period. The aforesaid finding is based on an erroneous computation of the statutory period by the learned Judge who had deducted the first day of remand and added the last date to calculate the statutory period of detention. In the case of ***Enforcement Directorate, Government of India vs. Kapil Wadhawan and Ors.***¹ the Hon'ble Apex Court has held the statutory period of detention is to be computed by adding the initial day of remand. Mr. Sengupta, learned Counsel for the State refers to ***M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence***² in support of his contention that the application for extension of period of detention had been filed prior to the expiry of the period of detention and the right to statutory bail would not crystallize till it is disposed of. This is of little assistance to the prosecution as it chose not to press the said extension prayer and rely on the police report filed on the 181st day to defeat the plea of statutory bail.

Under such circumstances, we are inclined to hold that the petitioner who had prayed for statutory bail prior to filing of police report was entitled to statutory bail. Moreso as the report of the Public Prosecutor seeking extension had not been pressed.

¹ MANU/SC/0329/2023

² (2021) 2 SCC 485

In ***Judgebir Singh @ Jasbir Singh Samra @ Jasbir and Others vs. National Investigation Agency***³ the Hon'ble Apex Court, inter alia, observed that the report of the learned Public Prosecutor seeking extension ought to be filed reasonably prior to the expiry of statutory period of extension so that the said prayer can be considered before expiry of the said period. In the present case no such effort was taken. On the contrary, extension application filed earlier was given a go-bye and the Public Prosecutor sought to justify detention on the basis of a police report submitted on the 181st day after the right to statutory bail had been availed. Accordingly, we are inclined to grant bail to the petitioner.

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 conditions that petitioner 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 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.

³ 2023 SCC OnLine SC 543

The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)