

07.07.2023

11
sdas
rejected

C.R.M.(NDPS) No. 1227 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kaliachak Police Station Case No. 1351 of 2022 dated 23.11.2022 under Sections 21(c)/29 of the NDPS Act.

And

In Re : Ekramul Sk. petitioner

Mr. Amitabha Karmakar

Mr. Arup Kumar Bhowmick

....for the petitioner

Mr. Sudip Ghosh

Mr. Bitasok Banerjee

..... for the State

Learned Counsel for the petitioner submits he is entitled to statutory bail as the prayer for extension of period of detention under proviso to Section 36A(4) of the NDPS Act had not been allowed.

Learned Counsel for the State opposes the prayer for bail and submits police report had been filed before the expiry of six months as envisaged under Section 36A(4) of the NDPS Act.

In rebuttal it is contended on behalf of the petitioner that the police report had been filed before a wrong court i.e. Chief Judicial Magistrate instead of the Special court.

We have considered the materials on record. Though extension of the statutory period of detention under Section 36A(4) of the NDPS Act was not allowed, the investigating agency filed the police report within 180 days of arrest and prayed for

further investigation. Erroneously the police report was submitted before the learned Chief Judicial Magistrate instead of the Special court. This inadvertent error does not give rise to an inference that the police report had been filed after the expiry of the statutory period of detention. Failure to file the police report before the appropriate court may have hindered taking of cognisance on the report. The fundamental requirement on which the prayer for default bail is based is completion of investigation and not taking of cognisance on the report. Under such circumstances we are of the opinion petitioner has not been able to make out a case to be released on statutory bail.

On merits, there are ample materials to show recovery of narcotics above commercial quantity from the petitioner.

Hence, we are not inclined to grant bail to the petitioner. The application for bail is, thus, rejected.

Further investigation with regard to collection of chemical report be expedited and the supplementary report be filed before the Special court as early as possible preferably within six months from date.

Parties shall communicate this order to the Special court to ensure compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)