

25.07.2023
Sl. No.9
akd
[Rejected]

C. R. M. (NDPS) 1303 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 19.07.2023 in connection with Titagarh Police Station Case No.687 of 2022 dated 20.11.2022 under Section 21(c) of the NDPS Act.

And

In Re: ***Md. Sahrukh @ Sarukh***

... .. Petitioner

Mr. Parthapratim Das
Mr. Monajit Chakraborti

... .. for the petitioner

Mr. Sanjay Bardhan
Ms. Debjani Dasgupta

... .. for the State

Petitioner has prayed for statutory bail.

It is submitted on behalf of the petitioner that he was arrested on 20.11.2022. On 12.05.2023, an application was made under the proviso to Section 36A(4) of the NDPS Act seeking extension of the period of detention. No order was passed on the said application and after expiry of 180 days i.e. on 02.06.2023, petitioner prayed for statutory bail.

Both the applications were considered on 05.06.2023 and the prayer for extending the period of detention was allowed, inter alia, on the ground that further investigation is necessary as chemical examiner's report is awaited and the petitioner has criminal antecedents.

Mr. Parthapratim Das, learned Advocate for the petitioner submits that the finding of the Judge with regard to criminal antecedents is perverse. His client had already been acquitted of the said case.

On the other hand, Mr. Sanjay Bardhan, learned Advocate for the State submits though petitioner had been acquitted in one case, another case is pending against him.

In rebuttal, it is contended on behalf of the petitioner that the case pending against him is not under the NDPS Act.

We have considered the materials on record. The Special Judge while considering the application for extension of the period of detention under the proviso to Section 36A(4) of the NDPS Act is required to satisfy himself with regard to twin factors i.e. progress of investigation and specific reasons for further detention during continuation of the investigation.

With regard to the first clause the learned Judge recorded that the investigation has substantially progressed but due to non-availability of the chemical examiner's report, police report could not be filed. On the second clause, the learned Judge referred to *Subhas Yadav vs. State of West Bengal*¹ and noted that the petitioner has criminal antecedents and rejected his prayer for statutory bail.

Though it is strenuously argued that in one of the cases the petitioner has been acquitted, materials on record show another case is pending against him. In view of the aforesaid criminal antecedent, continued detention in course of investigation was warranted.

We find no reasons to interfere with the said order. Investigation is complete and the matter is ready for trial.

On merits, we find there are materials to show narcotics above commercial quantity i.e. *codeine phosphate* was recovered from the petitioner. Quantum of narcotics recovered may be thrashed out in course of trial. Hence, we are not inclined to grant bail to the petitioner.

¹ 2023 SCC OnLine Cal 313

The application for bail is thus rejected.

Trial court is directed to consider the issue of framing of charge at the earliest and in the event charge is framed, to take the proceeding to its logical conclusion without delay.

Parties shall communicate a copy of this order to the trial court for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)