

04.08.2023
Sl. No.2
akd
[Rejected]

C. R. M. (NDPS) 1338 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 27.07.2023 in connection with English Bazar Police Station Case No.670 of 2022 dated 30.04.2022 under Sections 22(c)/25/27A/28/29 of the NDPS Act. (NDPS Case No.64 of 2022)

And

In Re: ***Ainul Sk. & Anr.***

... .. Petitioners

Mr. Sekhar Kumar Basu .. Sr. Advocate
Mr. Antarikhya Basu
Ms. Madhumita Basak

... .. for the petitioners

Mr. Sanjay Bardhan
Mr. Palash Ch. Majhi

... .. for the State

It is submitted on behalf of the petitioners that police report was filed on the 182nd day and they are entitled to statutory bail. It is further submitted there is non-compliance of Section 52A of the NDPS Act as samples which were sent for chemical examination were not drawn before the Magistrate.

Learned Advocate for the State opposes the prayer for bail and submits right to statutory bail had not been availed prior to filing of police report. It is also contended chemical examiner's report shows presence of *methamphetamine* in the samples collected.

We have considered the materials on record. In *M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence*¹, the Apex Court, *inter alia*, held the right to statutory bail ought to be availed before filing of the police report. Failure to communicate the right to the accused may be a dereliction on the part of judicial authority but would not fructify to statutory bail, if not availed of.

¹ (2021) 2 SCC 485

It is also pertinent to note samples collected in the course of investigation show presence of *methamphetamine*. Alleged non-compliance of Section 52A of the NDPS Act may be addressed in the course of trial. It may not be out of place to mention such defect is not an incurable one and may be corrected in the course of trial.

Statements of witnesses including contemporaneous document i.e. seizure memo disclose recovery of large quantity of narcotic substance i.e. *Yaba* tablets from the vehicles which were apprehended. Petitioners were present in one of the vehicles. Under such circumstances and in view of the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioners.

The application for bail is thus rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)