

05.10.2023

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rejected

C.R.M.(NDPS) No. 1627 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Airport Police Station Case No. 151 of 2020 dated 16.09.2020 under Sections 20(b)(ii)(c)/28/29 of the NDPS Act.

And

In Re : Asif Khan petitioner

Mr. Subhabrata Chowdhury

Ms. Tripti Pandey

Mr. Biswajit Goswami

....for the petitioner

Mr. Sanjoy Bardhan

Ms. Baishakhi Chatterjee

..... for the State

1. Learned Counsel for the petitioner submits he is in custody for three years. He has been falsely implicated in the case. He prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits petitioner and co-accused entered into a conspiracy and was transporting large quantity of ganja in two vehicles. Petitioner was in a car which was escorting other vehicle. From the car 30 kgs. of ganja was recovered and 1100 kgs. of ganja was recovered from the other vehicle. Bail prayer of the co-accused has been rejected in CRM (NDPS) 365 of 2023 dated 14.03.2023.

3. We have considered the materials on record. Petitioner and co-accused entered into a conspiracy and was

transporting ganja in two vehicles. In one vehicle 1100 kgs. of ganja was being transported. Petitioner was in the vehicle wherein 30 kgs. of ganja was recovered. Petitioner's vehicle was escorting the other vehicle. Charge against the petitioner is not only of possession but conspiracy too. Hence, total quantity of narcotics recovered from both the vehicles need to be taken into consideration to assess the gravity of the offence. Even otherwise, amount of narcotics recovered from the petitioner's vehicle is above commercial quantity. It is contended that petitioner has suffered incarceration for three years and may be released on bail in the light of ***Mohd. Muslim alias Hussain vs. State (NCT of Delhi)***¹. The ratio laid down in the aforesaid report entitles an accused to bail on the ground of inordinate delay in trial and fetters under Section 37 of the NDPS Act are not attracted in such cases. We have considered the aforesaid proposition of law in the factual matrix of the case. While dealing with the bail prayer of the co-accused prolonged detention was taken into consideration and this Court directed the trial Judge to conclude trial within one year from date fixed for recording evidence. Said direction equally applies to the petitioner who is a co-accused in the case. Time frame proposed by this Court has not expired. In this factual background we are of the view petitioner has not made out a case for consideration of his bail prayer on the ground of inordinate delay in trial till the time frame fixed by this Court is breached.

¹ 2023 SCConLine SC 352

Hence, we are not inclined to grant bail to the petitioner at this stage.

4. Trial court is directed to conclude the trial within the time schedule prescribed in CRM (NDPS) 365 of 2023.

5. The application for bail is, thus, rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)