

01.11.2023
24.
Court no. 8
Sd/br

***In the High Court at Calcutta
Criminal Miscellaneous Jurisdiction
Appellate Side***

CRM (NDPS) 1795 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 25.10.2023 in connection with Coke Oven Police Station Case No. 93 of 2022 dated 18.05.2022 under Sections 20(b)(ii)(c)/29 of the NDPS Act, 1985.

In the matter of : Kartick Sahapetitioner.

Ms. Rajnandini Das
Mr. Chitrak Biswas

...for the petitioner.

Mr. P. K. Ganguly

.....for the State.

1. The petitioner seeks bail on several grounds. First, it is argued that Section 41(2) of the N.D.P.S. Act has not been complied with inasmuch as the officer conducting the search and seizure was not authorized in terms of Section 41 of the NDPS Act. That apart, the FIR was registered and complaint made on May 18, 2022 whereas the petitioner was arrested on the date before, that is, on May 17, 2022.

2. Out of the 14 witnesses proposed by the prosecution, only four witnesses have been examined till date.

Moreover, it is argued that the sample was sent for testing to the Botanical Survey of India which is not authorized to conduct the relevant test under the N. D. P. S Act.

3. Learned counsel for the petitioner places reliance on a judgement of the Supreme Court in the matter of *Hasanuzzaman & Ors. vs. the State of West Bengal* as well as a co-ordinate Bench judgment rendered in *Sunil Kumar Roy and another vs. the State of West Bengal* in support of her propositions.

4. Learned counsel for the State opposes the prayer for bail. It is contended that out of total 11 witnesses, four witnesses have been examined and some further time will be required to conclude the trial. Moreover, the quantity of ganja recovered was huge, being to the tune of 353.1kg.

5. The contravention of Section 41(2) is squarely denied by the respondent and it is submitted that the seizure was effected between 21:15 and 22:35 hrs. on May 17, 2022 and as such, the formal registration of the FIR spilt over to the next calendar date.

6. Upon consideration of the submission of the parties, we find that while making the observation on Section 41(2) and Section 42 of the N.D.P.S Act the co-ordinate Bench, in the judgement cited by the petitioner, was dealing with an appeal, which was against a final order passed after the trial was concluded.

7. We are at present at the stage of bail and, as such, the detailed evidence cannot be appreciated prematurely at this stage.

8. Hence, the observations made by the co-ordinate Bench upon a perusal of the evidence in the cited judgement of *Sunil Kumar Roy(supra)* cannot be adhered to in the context of the bail application.

9. In so far as the order of the Supreme Court passed in *Hasanuzzaman and ors (supra)* is concerned, the Supreme Court made a sweeping observation that the investigation was completed in the said case and chargesheet had been submitted. Moreover, the conclusion of the trial would take some reasonable time, for which the Supreme Court proceeded on the premise that the petitioner does not have a criminal antecedent and substantial compliance of Section 37 of the N.D.P.S Act had taken place.

10. However, the Supreme Court, in the said judgement, did not lay down a blanket proposition of any sort that in all cases where trial is going on, the accused persons shall be enlarged on bail.

11. Moreover, in the present case, there is prima facie credibility in the prosecution case, which is the only factor to be ascertained at this stage, in respect of the search and seizure being during the wee hours of the night, which spilt

over to the next calendar date, explaining the successive dates of search and seizure and registration of the FIR.

12. Insofar as the contravention of Section 41 of the NDPS Act is concerned, the same is a disputed question of fact and law which is to be dealt with in the trial.

13. As the trial is already in progress, we are of the opinion that a direction to expeditiously conclude the trial would suffice. We are not unmindful also of the fact that the quantity of article recovered was huge, being much above the commercial quantity.

14. Accordingly, CRM (NDPS) 1795 of 2023 is dismissed with the direction on the trial court to conclude the trial as expeditiously as possible, positively within a period of eight months from this date.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Chatterjee, J.)