

01.11.2023
Court No.8
Item. 28
(Suvendu/Sandip)

CRM(NDPS) 1799 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Special Task Force Police Station Case No. 06 of 2022 dated 19.02.2022 under Sections 20(b)(ii) (B)/23(b)/22(c)/ 29 of the NDPS Act, 1985 pending in the Court of the learned Judge, Bench -I, NDPS Act, City Sessions Court, Calcutta being NDPS Case No. 11 of 2022.

And

In the matter of: Md. Samir Ahmed

.Petitioner.

Mr. Sabyasachi Banerjee
Mr. Apalak Basu
Mr. Soumyajit Chakraborty

for the Petitioner.

Mr. Swapan Banerjee
Mr. Pravas Bhattacharya

for the State.

1. The petitioner contends that the petitioner was framed, on which count bail is sought.
2. It is argued that in an order passed by a writ court on the petition of a co-accused person, the coordinate Bench had observed on May 15, 2023 that the respondent nos. 2 and 5 therein were to preserve the data pertaining to the CCTV footage of the STF Police Station and the place of arrest on February 18, 2022 and produce the same before the Sessions Court as and when trial commences.
3. It is further argued that the witnesses who purportedly signed the seizure list were not local witnesses as such and were procured for the

purpose of framing the petitioner on false charges. Importantly, it is argued that when the matter came up before the Sessions Court, which is in seisin of the trial, caustic observations were made by the Sessions Court to the effect that even after eighteen months, the said CCTV footage of the relevant places, including Park Street, where the petitioner was present at the relevant point of time, were never produced.

4. Learned counsel points out the patent discrepancy between the articles as described in the complaint and the chemical report concerned.
5. Learned counsel for the STF opposes the prayer for bail and submits that a similar prayer of a co-accused person was rejected by an order of a coordinate Bench. It is argued that the said coordinate Bench went through the entire materials on record and as such, the present petitioner ought not to be excepted on the basis of the same materials. That apart, it is argued that the STF was not a party to the writ petition.
6. It is further alleged that the trial is already underway and as such, the petitioner cannot get the advantage of bail. It is contended by learned counsel for the State that the petitioner was apprehended red-handed, and the recovery was made from an article sent by courier apparently in the name of the deceased father of the petitioner which itself raises suspicion.
7. At this juncture, however, we are not inclined to enter into an exercise of assessment of the evidence which is a subject matter of trial. However, it is palpably clear before us that there is patent discrepancy between the descriptions of the seized articles which finds place in the

complaint, which is the genesis of the FIR, and the chemical report. In the complaint, which is annexed to the present application, we find that a packet containing huge number of pink coloured tablets commonly known as 'Yaba' could be found and some portions of the said substance were tested by a testing kit and found positive for presence of Amphetamine tablet.

8. However, from the chemical report dated March 25, 2022, which is also annexed to the application, we find that apart from Ganja, Meta-amphetamine and Caffeine were detected in the contents. Under the relevant schedule of the NDPS Act, Amphetamine and Meta-amphetamine are completely different substances, although both are contraband substances in there "own right".
9. However, such palpable discrepancy between the sample allegedly recovered and the sample sent for examination itself casts patent doubt on whether the rigour of Section 37 of the NDPS Act should be applied to the petitioner.
10. It is arguable as to whether the STF itself was bound by the orders passed by the writ court. However, it appears palpably from the tenor of the order that the intention was to preserve CCTV footage of the STF Police Station and the place of arrest on February 18, 2022. It is not credible that the respondent authorities were not aware of such order, since in any event the State was impleaded in the said writ petition.
11. Hence, we find sufficient loopholes and chinks in the chain of events, which hit at the root of the incrimination of the petitioner for the offences alleged. Thus, we are of the opinion that the presumption under Section 37 is not squarely applicable to the petitioner. Moreover, we take judicial notice of the fact that out of the proposed

32 witnesses, only the examination of PW1 has commenced. Hence, there is sufficient doubt as to whether the trial would be concluded in the near future.

12. Since trial has already commenced after filing of charge-sheet and framing of charges, we are of the opinion that further custodial trial of the petitioner is not necessary.
13. In such circumstances, CRM(NDPS) 1799 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bond of Rs. 10,000/- (Rupees Ten Thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the CMM at Calcutta.
14. Further, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.
15. The petitioner shall also not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
16. In default of compliance of any of the above conditions, the bail granted to the petitioner shall stand automatically cancelled.

(SABYASACHI BHATTACHARYYA, J.)

(PARTHA SARATHI CHATTERJEE, J.)