

D/L. 25.
November 08, 2023
rp/gc

CRM (NDPS) 1823 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with Titagarh Police Station Case No. 687 of 2022 dated 20.11.2022 under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Md Sahrukh @ Sarukh

.... Petitioner

Mr. Moyukh Mukherjee,
Mr. Abhijit Singh,
Mr. Avijit Dev,
Ms. Sagnika Banerjee,

... for the Petitioner.

Ms. Faria Hossain,
Ms. Mamata Jana

... for the State.

1. The application for statutory bail by the petitioner was rejected on 25th July, 2023. Subsequent thereto, the entire proceedings have been challenged by the petitioner by filing a writ petition being WPA 21188 of 2023. In the said writ petition, after making *prima facie* observations, the learned Judge had directed preservation of the CCTV footage of the Police Station on and from 19th November, 2022 to 20th November, 2022. Directions for filing affidavits were given. Subsequently, the writ court noticed that the CCTV footages, as directed, were not preserved and as such, by an order dated 9th October, 2023, the trial is directed to remain stayed till 30th November, 2023, except consideration of application for bail. The petitioner thereafter made an application for bail which has been rejected by an order dated 18th October, 2023.

The petitioner in the present facts and circumstances is seeking to be enlarged on bail.

2. On behalf of the State, the application for bail is vehemently opposed on the ground that the writ petition is pending and the trial has been stayed for a limited period. In the event the petitioner is enlarged on bail, there is every likelihood of evidence being tampered and the trial being influenced, particularly keeping in mind, the criminal antecedent of the petitioner.
3. After hearing the parties and considering the materials on record, we find that the entire case of the prosecution has been *prima facie* doubted by the writ court following which the order as aforesaid has been passed. The charges have been framed and the matter was fixed for trial on 17th November, 2023 prior to the same being stayed.
4. Even though, the recovery is said to be of commercial quantity but taking into account the doubt which has crept in the mind of the writ court, we find that the provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 gets diluted in the facts of the instant case.
5. Considering these facts, we find that there is no requirement for detaining the petitioner in custody at this stage.
6. The petitioner will be enlarged on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Barrackpore on the following conditions:
 - i) The petitioner shall not leave the local limits of the jurisdictional police station where he resides

without prior information to the I.C./O.C. of the concerned police station.

- ii) The petitioner should be present in court on the dates when the trial is fixed. In default, the trial court shall be at liberty to cancel the bail bond without reference to this Court.
 - iii) The petitioner shall co-operate with the trial and shall obey all directions given by the court from time to time.
 - iv) He shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.
7. The trial be concluded as expeditiously as possible without granting any unnecessary adjournments to either of the parties.
8. The application for bail CRM (NDPS) 1823 of 2023 is, accordingly, disposed of.

(Arindam Mukherjee, J.)

(Biswaroop Chowdhury, J.)