

22.12.2023
Sl. No.9
akd
[Rejected]

C. R. M. (NDPS) 1992 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 06.12.2023 in connection with Gopal Nagar Police Station Case No.134 of 2023 dated 08.03.2023 under Sections 20(b)(ii)/29 of the NDPS Act. (NDPS Case No.22 of 2023)

And

In Re: ***Palash Chakraborty***

... .. Petitioner

Mr. Sabyasachi Chatterjee
Mr. Omar Faruk Gazi

... .. for the petitioner

Mr. Debasish Roy .. Id. Public Prosecutor
Mr. Pinak Kumar Mitra

... .. for the State

1. It is submitted on behalf of the petitioner that there is non-compliance of Section 41-B of the Code of Criminal Procedure. None of his relations was informed at the time of arrest. On such premise bail prayer of co-accused had been allowed by a coordinate Bench of this court. Accordingly, he renews his prayer for bail on parity.
2. Learned Public Prosecutor opposes the prayer for bail and submits petitioner and co-accused were travelling in a vehicle. The vehicle was intercepted and narcotics i.e. 22 kgs. of *Ganja* was recovered. There was due compliance of Section 41-B of the Code of Criminal Procedure and the sister-in-law of the petitioner had been intimated.
3. We have considered the materials on record. Statements of witnesses and contemporaneous documents i.e. seizure memo and arrest memo show recovery of narcotic substance i.e. 22 kgs. of *Ganja* from a vehicle. Petitioner was arrested from the spot. Arrest memo indicates his sister-in-law was duly informed. On the other

hand, the arrest memo of co-accused viz. Sanjay Mondal with regard to information to his relation is vague. Arrest memo of Sanjay Mondal merely records duly informed but does not indicate the person who had been communicated.

4. Learned Public Prosecutor contends relation of the said accused had been intimated through local police station and State has filed an application for cancellation of bail of Sanjay Mondal.
5. Firstly, non-communication of arrest to a relation *per se* does not improbabilise the prosecution case. There are overwhelming evidence on record from the statements of witnesses and other contemporaneous documents with regard to his presence at the spot where recovery of narcotics was made.
6. In this backdrop, we are constrained to observe failure to comply with Section 41-B may attract remedies in the form of contempt proceeding against erring police officers or grant of compensation for illegal arrest but would not always render the prosecution case improbable¹. Be that as it, the factual matrix *prima facie* establishes compliance of Section 41-B of the Code of Criminal Procedure so far as petitioner is concerned. Bail prayer of the petitioner was rejected earlier on merits.
7. Accordingly, we are not inclined to grant bail to the petitioner at this stage.
8. The application for bail is thus rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ D. K. Basu vs. State of West Bengal, (1997) 1 SCC 416

