

06.06.2023
Court No.01
Item No. 2
Allowed

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

sg

CRM (NDPS) 263 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Jaigaon Police Station Case No. 200/2022 dated 17.08.2022 under Section 22(c) of NDPS Act.

And

In Re: **Roshan Lama**

Petitioner

Mr. Jaydeep Kanta Bhowmik
Mr. Sayantan Bhowmik
Ms. Rikta Sarkar

For the Petitioner

Mr. Aditi Shankar Chakraborty, Ld APP
Mr. Aniruddha Biswas

For the State

This is an application for bail. The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated. It is submitted that nothing has been recovered from the custody of the petitioner. The learned counsel has drawn our attention to the FIR and status report filed by the prosecution. It is further submitted that it is highly improbable, if not absurd, to suggest that the petitioner would be standing nearby a scooty which is abandoned and in front of him, there would be few packets containing contraband articles.

The learned counsel has drawn our attention to the inconsistencies in the FIR and the statement of the witnesses recorded under section 161 of the Code of Criminal Procedure to suggest that such statements are hearsay evidence.

The learned Counsel for the prosecution, however, opposes the prayer for bail. It is submitted that on the basis of source information, the house of one Tilak Bahadur Lama was raided and during such raid, some narcotics substances were recovered above commercial quantity and the statement of the seizure witness would show that the said articles belong to the petitioner. It is submitted that the control and domain over the said articles has been adequately established and prima facie suggests that the petitioner was dealing with narcotic substance above commercial quantity.

We have carefully read the FIR and the statement of the seizure witness. In the FIR, it is stated that on 17th August, 2022 the raiding team, on the basis of the source information from two independent witnesses, entered into the house of the suspect and they noticed that one person is standing beside the scooty bearing No. WB-70K/2854 and some big packets were lying in front of him. Significantly, the owner of the scooty was not found to be present and no attempt has been made to include the name of the owner of the vehicle in the FIR nor the statement of the owner of the house was recorded implicating the petitioner.

The best person who could have thrown light with regard to the possession of the petitioner in the premises in concerned would be Tilak Bahadur Lama who has been conveniently left out and not examined at all. Moreover, we have been informed that the name of the owner of the scooty was included subsequently but no attempt has been made to secure his presence and till date, no attempt has been made for proclamation and attachment if she is found to be absconding.

On the basis of the aforesaid facts, it could be presumed that there are reasonable grounds for believing that he is not guilty of the offence and he was able to rebut the presumption under section 37 of the NDPS Act. Moreover, the charge-sheet has been filed and we are of the view that the custodial interrogation

of the petitioner is no more required. Accordingly, we allow the application for bail subject to fulfillment of the following conditions:

- i) The petitioner shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local subject to satisfaction of learned Additional Sessions Judge, 1st Court, Jalpaiguri as well as Special Court under NDPS Act;
- ii) The petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever;
- iii) The petitioner shall not leave the station without the permission of the learned Special Judge, NDPS Court;
- iv) The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;
- v) The petitioner shall attend the trial on every hearing, unless exempted in accordance with law;
- vi) The petitioner shall inform the Special Judge as well as the Officer-in-Charge of the Police Station about his place of residence during bail and trial. Any change in the same shall also be communicated within 48 hours thereafter. Petitioner shall furnish details of his Aadhaar Card, Telephone Number, E-mail, PAN Card, bank Account Number, if any. The petitioner shall surrender his passport to the learned Trial Court. In the event he does not hold any passport, he shall file an affidavit to that effect before the learned Trial Court;

vii) The petitioner shall not indulge in any criminal activities. It is made clear that in case the petitioner is arraigned as an accused in future in any FIR, then this bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard. This shall also be considered as a negative factor for consideration of his future bail application, if any.

We, however, make it clear that the observations made are only prima facie and it is needless to mention that this order shall not influence the trial in any manner whatsoever.

The application for bail of the petitioner is allowed. CRM (NDPS) 263 of 2023 is accordingly, disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J)

(Soumen Sen, J)