

01.03.2023
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**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

C.R.M. 497 of 2021

In Re : An application for of bail under section 439 Cr.P.C in connection with Kotwali PS case no. 486 of 2019 dated 11.8.2019 under section 17(c)/25/29 of the NDPS Act

And

Allowed

In re : Ramesh Manju Bishnoi @ Ramesh Manju Bishnoy @
Ramesh Kumar Bishnoi petitioner

Mr. Rajdeep Mazumder

Mr. A Das

Mr. Moyukh Mukherjee

Mr. Pritam Roy

Ms R Agarwal

..... For the petitioner

Mr. A. S. Chakraborty

Mr. Suorav Ganguly

Mr. Aniruddha Biswas

..... For the State

Petitioner submits he was arrested from Rajasthan on 14.8.2019. Upon transit remand he was produced before the jurisdictional court on 19.8.2019. Statutory period of detention i.e. 180 days expired on 11.2.2020. A report of the learned Public Prosecutor seeking extension of period of detention under the proviso to section 36A(4) of the NDPS Act was filed before the Special Court. The report was considered on 15.2.2020 and the period of detention was extended up to 7.3.2020. On 12.03.2023 petitioner prayed for statutory bail on the ground no report seeking further extensions of detention had been filed. On the same day, report of Public Prosecutor seeking further detention was filed. In

this factual background learned counsel for the petitioner submits he is entitled to statutory bail on the following grounds:-

- (i) Prayer for statutory bail was filed prior to the submission of the report of Public Prosecutor
- (ii) Report of Public Prosecutor seeking further extension is based on the sole ground of non-availability of chemical examiner's report.

In rebuttal, learned counsel for the State submits petitioner hails from a different State. He was arrested and produced before the jurisdictional court. Due to non-availability of chemical examiners report, extension of period of detention was granted on 15.2.2020 till 7.3.2020. Subsequent report was filed on 12.3.2020 and the prayer was allowed. Supplementary charge sheet enclosing chemical examiner's report has already been filed. Hence, he opposes the prayer for statutory bail.

We have considered the materials on record. Petitioner was arrested on 14.8.2019. The statutory period of detention i.e. 180 days expired on 11.2.2020. Initial report for extension was filed on 1.2.2020. It was disposed of on 15.2.2020 and the period of detention was extended till 7.3.2020. Petitioner had not filed prayer for statutory bail prior to the submission of initial report seeking extension. Hence, in the light of *M Ravindran vs. Directorate of*

*Revenue Intelligence*¹, his right to statutory bail had not crystallized.

However on 12.3.2020 he preferred an application for statutory bail. It is strenuously contended that the report of the Public Prosecutor had been filed on the same day prior to the prayer for statutory bail. But prosecutor is unable to place on record any material to sustain the plea that the report for further detention had been filed prior to the application for statutory bail. Even otherwise, the report of the Public Prosecutor seeks further extension of detention primarily on the ground of non-availability of chemical examiner's report. In *Subhas Yadav vs. State of West Bengal*² a Special Bench of this court, *inter alia*, held when the report of the Public Prosecutor seeking extension of detention is solely based on the ground of non-availability of chemical examiner's report, extension may not be granted unless other aggravating circumstances are present.

We have examined the report of the Public Prosecutor. Primary ground taken therein is non-availability of chemical examiner's report. Though vague averments that petitioner may commit similar offence in future is pleaded, no material is placed on record to show that the petitioner has criminal antecedents which would give rise to a reasonable inference of recidivism.

¹ (2021) 2 SCC 485

² 2023 SCC OnLine Cal 313

In view of the aforesaid circumstances, we are of the opinion further extension of the period of detention merely on the ground of non-availability of chemical examiner's report was unjustified. That apart, petitioner is in custody for more than three years. Only one out of 28 prosecution witnesses proposed to be examined, has deposed till date. There is little possibility of the trial concluding in near future.

Under such circumstances, we are inclined to enlarge the petitioner on bail.

Accordingly, the petitioner 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 to the satisfaction of the learned Judge, Special Court under NDPS Act cum Additional Sessions Judge, 2nd court, Jalpaiguri on condition that the petitioner shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that petitioner while on bail, shall remain within the district of Jalpaiguri and shall provide the address where he shall presently reside to the investigating agency as well as to the court below. He shall report to the officer in charge of the police station concerned within whose jurisdiction he shall reside while on bail once in a week until further orders.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application being CRM 497 of 2021 and all connected applications are disposed of.

(Subhendu Samanta,J.)

(Joymalya Bagchi, J.)