

06.06.2023
SL No.11
Court No.1
(gc)
(Rejected)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (NDPS) 307 of 2023

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Dhupguri Police Station Case No.56 of 2022 dated 01.02.2022 under Section 21(b)(ii)(c) of the NDPS Act.

And

In the matter of : **Tarun Saha**

- Petitioner.

Mr. Sudip Guha

... For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. A.P.P,

Mr. Saikat Chatterjee,

Mr. Chattu Roy

... For the State.

The learned Counsel for the petitioner submits that the petitioner is in custody for over one year four months and he has been falsely implicated. It is further submitted that failure to complete the investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband would not justify further detention in view of the judgment of the Special Bench in ***Subhas Yadav Vs. The State of West Bengal***, reported at ***2023 SCC Online Cal 313***.

The learned Counsel for the State, however, opposes the prayer for bail. It is submitted that FSL report was submitted during the extended period. The petitioner did not in writing or oral pray for default bail after the expiry of 180 days and before the application being filed by the petitioner. In any event, having

regard to the fact that during the extended period, the FSL report shows narcotic substance recovered is over and above commercial quantity, the prayer for bail is required to be rejected.

We have considered the submission made on behalf of the parties. It appears from record that during the extended period, the FSL report was obtained which, prima facie, shows that the substance recovered is a narcotic substance and the seizure memorandum would show recovery of 29 Kgs of Ganja which is above commercial quantity. Admittedly, the petitioner did not apply for default bail oral or in writing before the application has been filed by the prosecution for extension of time to complete investigation and file the FSL report. The investigation is complete. Charge-sheet has been filed.

Under such circumstances, we are not inclined to grant bail to the petitioner. However, we request the learned Judge, Special Court (Under the N.D.P.S. Act), 1st Court, Jalpaiguri to ensure compliance of Section 207 of the Cr.P.C. and invoke Section 309 of the Cr.P.C. after the charges are framed and proceed with the trial as expeditiously as possible.

The prosecution is directed to communicate this order to the learned Judge, Special Court (Under the N.D.P.S. Act), 1st Court, Jalpaiguri.

Accordingly, the application for bail is rejected and 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.)