

06.6.2023
Court No.01
Item No. 13
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Allowed

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

CRM (NDPS) 318 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Bagdogra Police Station Case No. 356 of 2022 dated 26.7.2022 under Section 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985.

And

In Re: **Chandan Kumar**

.... Petitioner

Mr. Sourav Ganguly
Mr. Debasish Mukhopadhyay
Mr. Anirban Banerjee
Ms. Madhushri Datta

... For the Petitioner

Mr. Ujjal Luksom
Mr. Tapan Bhattacharjee

... For the State

Learned counsel appearing for the petitioner submits that the petitioner is innocent and he has been falsely implicated in this case.

It is further submitted that his right to get statutory bail was not properly considered by the trial court. In fact, the accused has filed an application for statutory bail soon after the expiry of 180 days and the same was not considered by the trial court, although the law in this regard has been settled in **Sanjay Kedia Vs. State of Bihar, reported in 2009(17) SCC 631** and subsequently followed by Special Bench in **Subhas Yadav Vs. State of West Bengal, reported in 2023 SCC Online Cal 313**.

Learned counsel for the prosecution opposes the prayer for bail.

It is submitted that the application for extension was filed before the expiry of the statutory period since the FSL report was not available. It is submitted that after obtaining FSL report within the extended time the charge-sheet has been filed.

We have considered the submissions made on behalf of the parties.

It is an admitted fact that the application for extension was filed due to non-availability of the chemical examination report which may not justify for further detention of the accused beyond the statutory period as observed in **Sanjay Kedia (supra) and Subhas Yadav (supra)**.

In **Subhas Yadav (supra)** in paragraph 31(6) it is clearly stated that failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. In **Subhas Yadav (supra)** carved out an exception to the said principle which, inter alia, would include complexities in investigation in an organized crime racket or inter-state/trans-border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co-accused etc. on which ground failure to submit the FSL report within the statutory time limit could be a ground for refusing bail.

Learned counsel for the State has, however, failed to demonstrate the exceptional circumstances on the basis of which the bail could be refused. In the application for extension of time to file the charge-sheet beyond the statutory period no such exceptional circumstances were mentioned.

Under such circumstances, 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 Judge, Special Court, (NDPS Act), 2nd Court, Siliguri .
- 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) 318 of 2023 is accordingly, disposed of.

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

(Raja Basu Chowdhury, J.)

(Soumen Sen, J.)