

06.06.2023
SL No.26
Court No.1
(gc)
(Allowed)

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

CRM (NDPS) 340 of 2023

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with N.D.P.S. Case No. 39/2021 arising out of SI SL No.01/2021-2022 dated 04.07.2021 arising out of P.R. No.01/2021-2022 registered at Officer In-charge of Excise Alipurduar Range Preventive Unit under Section 20(b)(ii)(c) of N.D.P.S Act.

And

In the matter of : **Shankar Ram**

- Petitioner.

Ms. Ashima Mandla,
Mr. Deborshi Dhar,
... For the Petitioner.

Mr. Kallol Acharjee
Mr. Sourav Ganguly,
... For the State.

The learned Counsel for the petitioner submits that the petitioner is in custody since 4th July, 2021 and the charge-sheet was filed on 21st January, 2022 after an extension was obtained on expiry of 180 days solely on the ground of non-availability of FSL report. The learned Counsel has relied upon the Special Bench judgment of our Court in ***Subhas Yadav Vs. The State of West Bengal***, reported at **2023 SCC Online Cal 313 (Paragraph 31(6))** and has argued that the Special Bench has categorically stated that the failure to complete the 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

cannot justify further detention pending completion of investigation.

The learned Counsel for the State opposes the prayer for bail. However, it has been fairly submitted that the exceptions carved out in Paragraph 31(6) of **Subhas Yadav** (supra) does not apply to the petitioner.

In view of the aforesaid facts and circumstances and having regard to the fact that the application for extension was filed solely on the ground of non-submission of the FSL report, we are inclined to grant bail to the petitioner following the decision of **Subhas Yadav** (supra).

Accordingly, we allow the application for bail subject to 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 the satisfaction of learned Judge, Special Court, (under N.D.P.S. Act), 2nd Court, Jalpaiguri;
- 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, NDPS Court as well as the Officer-in-Charge of the Police Station concerned 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.

Since the charges have been framed, we request the learned Special Judge to comply with Section 309 of the Cr.P.C. and proceed with the trial as expeditiously as possible.

Accordingly, the application for bail being CRM (NDPS) 340 of 2023 is 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.)