

09.06.2023

Ct.No. 1

Item No. 14

Sb / Saswata

Allowed

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

C.R.M. (NDPS) 386 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with New Jalpaiguri PS case no. 203 of 2022 dated 02.03.2022 under Section 23(c) of the NDPS Act, 1985 and under Sections 25(1)(a)/27 of the Arms Act.

And

In the matter of : **Dipak Ch. Barman**

...petitioner

Mr. Sourav Ganguly

Mr. Biswarup Roy

...For the petitioner

Mr. Tapan Bhattacharjee

Mr. Kallol Nag

....For the State

1. This is an application for bail.
2. 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**.

3. Learned Counsel for the State opposes the prayer for bail.
4. It is submitted that the application for extension was filed on 22nd August, 2022 before expiry of statutory period since the FSL report was not available and was allowed on 25th August, 2022. It is submitted that after obtaining FSL report within the extended time the charge-sheet has been filed on 25th December, 2022.
5. 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)**.
6. In a similar issue came up for consideration in CRM (NDPS) 241 of 2023 where the coordinate Bench presided over by Justice Joymalya Bagchi, who had authored the Special Bench Judgment in **Subhas Yadav (supra)**, allowed the bail with the following observations:

“We have considered the materials on record. Petitioner was arrested on 29.11.2021. The statutory period of detention i.e. 180 days expired on 29.5.2022. It is true report of the Public Prosecutor was filed prior to the petitioner seeking statutory bail. Hence, his prayer for statutory bail does not crystallize till the said

*application was disposed of. However, the application was kept pending for about two months. In the meantime, the petitioner approached this court in CRM (NDPS) 178 of 2022 for bail. Co-ordinate Bench of this court directed the trial court to dispose of the application for extension of detention as expeditiously as possible. But to no avail. In the meantime police report has been filed and cognizance has been taken. Delay in disposing of the application for statutory bail was by the trial court. It ought not prejudice the petitioner. In Subhas Yadav vs. State of West Bengal a Special Bench of this Court held it is the duty of the Court to dispose of a prayer for extension of detention at the earliest. This mandate has been flagrantly violated in this case and has prejudiced the petitioner. We have also examined the reasons for seeking extension of period of detention as per the report of prosecutor. Primary reason canvassed therein is non-availability of chemical examiner's report. Vague averments with regard to abscondence have also been pleaded. Mere residence of the petitioner in a different district cannot be a ground to infer abscondence. Accordingly, we are satisfied if the report of extension had been taken up for consideration on merits, the reason canvassed therein i.e. nonavailability of chemical examiner's report would not justify further extension of detention in view of the law declared in Subhas Yadav vs. State of West Bengal (supra). Hence, we are of the view that the petitioner may be released on bail." **(Emphasis supplied)***

7. 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.

8. 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.

9. 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 Additional Sessions and Special Judge, 1st Court (under NDPS Act) at 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 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 4 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.

10. 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.
11. CRM (NDPS) 386 of 2023 is, accordingly, disposed of.
12. 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.)