

05.07.2023
Item no.70.
Court No.01.
S. De
(Allowed)

Circuit Bench of Calcutta High Court
at Jalpaiguri

CRM (NDPS) No. 488 of 2023

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 23.06.2023 in connection with Jaigaon Police Station Case No. 57 of 2020 dated 18.02.2020 under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of : Sivaji Karmakar @ Sibaji.

.....Petitioner.

Mr. Sourav Gangully,for the Petitioner.

Mr. Aditi Shankar chakraborty, Ld. APP,
Mr. Kallol Nag,
.....for the State.

The petitioner applied for statutory bail before the learned Trial Court. His prayer was rejected. Hence, he is before us with the same prayer.

The petitioner says that after expiry of the initial period of 180 days, he applied for statutory bail. However, extension of time was granted to the Investigating Agency only on the ground that the FSL report was not available. This is not permissible in view of the decision in ***Subhas Yadav Vs. State of West Bengal (2023 SCC Online Cal 313)***.

The State says that the Investigating Agency was not at fault. It was the days of Covid and, therefore, the report could not be collected.

After considering the facts and circumstances of the case including the decision of the Hon'ble Supreme Court in ***S. Kasi Vs. the State of West Bengal [(2021) 12 SCC 1]*** which held that Covid could not curtail the statutory right of a citizen and the decision in Subhas Yadav (Supra), we are of the opinion that the petitioner's right to obtain statutory / default bail could not be curtailed. Admittedly, the investigation was not completed within the initial period of 180 days. The extension of time was granted on a ground which has been held by a full Bench of our Court in Subhas Yadav (Supra) not to be a valid ground.

In view of the aforesaid, this application succeeds.

Accordingly, we direct that the petitioner, namely **Sivaji Karmakar @ Sibaji** shall be released on bail upon furnishing a bond of Rs.10,000/- , with two registered sureties of like amount each, to the satisfaction of the learned Special Judge (under NDPS Act), Jalpaiguri on condition that the present accused petitioner shall appear before the Trial court on each date of substantive hearing subject to the provisions of Section 317 Cr.P.C. and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial

court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)

(Arijit Banerjee, J.)