

14.07.2023
Item no.17.
Court No.01.
S. De
(Rejected)

Circuit Bench of Calcutta High Court
at Jalpaiguri

CRM (DB) No. 522 of 2023

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure.

And

In the matter of : Yogendra Singh @ Jogendra Singh.

.....Petitioner.

Ms. Ashima Mandla,
Mr. Surya Pratap Singh,
Mr. Deborshi Dhar,
.....for the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Nilay Chakraborty,
Mr. Arjun chowdhury,for the State.

Heard learned advocate for the petitioner and learned advocate for the State at length.

In support of the instant application for bail, learned advocate for the petitioner draws our attention to the provisions of Section 52 as well as Section 52A of the NDPS Act 1985, photocopy of the chargesheet as has been submitted in this case and also to the reported decision of ***Kashif Vs. Narcotics Control Bureau (2023 SCC Online Del 2881)*** .

It is argued that on perusal of the aforesaid legislative provisions, the material available in the chargesheet and the

reported decision of Kashif (Supra), it would appear that there occurred an unreasonable delay in sending the samples to FSL, which is violative of the Standing Order 1/88 and in particular Clauses 1.5 and 1.13 thereof. It is submitted further that considering the aforesaid aspect, the judgment of Kashif (Supra) was passed in favour of the accused in a bail application.

While opposing the prayer for bail, learned advocate for the State submits that from the chargesheet it would appear that no inordinate delay occurred in sending the exhibits to FSL. It is further submitted that the aforesaid Standing Order of Union of India is merely directory in nature and by no stretch of imagination, it can be said that the said standing order has the force of an Act or of a Statutory Rule.

We have meticulously gone through the provisions of Sections 52 and 52A of the NDPS Act, 1985, the material as available in the case diary including the charge sheet and also the reported decision of Kashif (Supra) as cited from the side of the present accused petitioner.

Admittedly, in the statute, there is no whisper as to within what time the exhibits are to be sent and on the contrary it is the intention of the legislature that such despatch has to be made without unnecessary delay. The term 'unnecessary delay' is a relative term and there cannot be any strait jacket formula to determine as to when or from what time such delay starts. Whether there occurred any unnecessary delay is to be

ascertained from the facts and circumstances as involved in the case pending before the Court.

Prima facie it appears from the material placed before us that there was no inordinate delay in sending the exhibits to the FSL on the part of the prosecution. The samples were taken on June 30, 2022 and were sent to FSL on July 10, 2022. Though in this regard our view is absolutely tentative, in view of the aforesaid we are of the opinion that the contention of the learned advocate for the petitioner cannot dilute the statutory restriction of Section 37 of the NDPS Act, 1985.

In view of such, we are not inclined to allow the prayer for bail.

The application for bail is, accordingly, rejected.

CRM (NDPS) 522 of 2023 is dismissed.

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.)