

30. 13.07.2023
Court
No.1 Tanmoy Ghosh

Allowed

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CRM (NDPS) 527 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with **Dhupguri Police Station Case No. 56 of 2022** dated **01.02.2022** under Section **20(b)(ii)(c)** of the Narcotic Drugs and Psychotropic Substances Act, 1985. NDPS Case No. 13/2022. Charge-sheet No. 578 of 2022 dated 30.09.2022 submitted under Section **20(b)(ii)(c)** of the NDPS Act, 1985.

And

In the matter of: - **Tarun Saha**

...petitioner.

Mr. Sourav Ganguly, Adv.,
Mr. Anirban Banerjee, Adv.

...for the petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Nilay Chakraborty, Adv.,
Mr. Arjun Chowdhury, Adv.

...for the State.

Commercial quantity of contraband item was recovered from the possession of the present petitioner and another accused person.

The petitioner's prayer for bail has been turned down by the learned trial Court. The petitioner says that he is entitled to statutory bail.

We have heard learned Counsel for the parties at length.

Learned Advocate for the State vehemently opposes the prayer for bail. He draws our attention to the restriction in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

In this case, the petitioner was arrested on February 1, 2022. 180 days expired on July 31, 2022. The State had applied on July 27, 2022, for extension of time to complete the investigation on the sole ground that the FSL report was still not available with the State. On July 29, 2022, the learned trial Court extended the time period for completing the investigation by 60 days from the date of expiry of 180 days.

Subsequently, the petitioner had applied for bail, which was turned down.

Learned Advocate for the petitioner says that as held by a Full Bench of this Court in the case of **Subhas Yadav – Vs. – State of West Bengal** reported in **2023 SCC Online Cal 313**, non-availability of FSL report cannot be a ground for extension of time to complete investigation. It was observed in that case that if the FSL report was not available in due time, it was an institutional failure for which the accused person's right to obtain statutory bail cannot be curtailed.

In the present case also, we find that the sole ground on which the time to complete investigation was extended for non-availability of FSL report. This is not a valid ground and there is no valid extension of time in the eye of law.

In the aforesaid facts and circumstances, this application for bail succeeds.

Accordingly, we direct that the petitioner, namely, **Tarun Saha**, shall be released on bail upon furnishing a bond of Rs.20,000/- with two registered sureties of Rs.10,000/- each, to

the satisfaction of the learned Judge, Special Court (under NDPS Act) Jalpaiguri, on condition that the present petitioner shall appear before the learned trial Court on each date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973, with a further condition that the present petitioner shall remain in the jurisdiction of the learned trial Court till conclusion of trial unless such conditions have been relaxed by the learned Trial Court.

In the event the petitioner fails to adhere to any of the conditions stipulated above without any justifiable cause, the learned 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 being CRM (NDPS) 527 of 2023 is thus allowed and disposed of.

(Arijit Banerjee, J.)

(Partha Sarathi Sen, J.)