

06.03.2023

Sl. Nos.3 & 4
akd

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

C. R. R. 210 of 2022
in
C. R. M. (NDPS) 223 of 2022

In Re: ***The Court on its own Motion***

... .. Petitioner

Mr. Arijit Ghosh

... .. for accused-Bappa Islam

Mr. Aditi Shankar Chakraborty .. Id. Addl. Public Prosecutor

Mr. Tapan Bhattacharjee

... .. for the State

In Re : C. R. R. 210 of 2022

Investigating Officer is personally present in court. His presence is noted and dispensed with.

Report is placed on record. From the report it appears that the owner of the godown is one Sikha Das presently residing at Barengapara, Meghalaya. It is also stated she had executed an agreement of tenancy in favour of one Biplab Das. The said Biplab Das is untraceable. But one Jayanta Saha, a local witness stated that the godown was used by Arnab Biswas who ran away from the spot. Arnab Biswas is also absconding.

Investigating Agency is directed to make further investigation with regard to the whereabouts of Arnab Biswas and Biplab Das and take the matter to its logical culmination by apprehending them.

We have taken up for hearing the suo motu Rule issued with regard to the bail granted to Bappa Islam.

Learned Advocate submits that his client is innocent but is not willing to file an affidavit in response to the Rule.

Statements of witnesses and materials on record show Bappa Islam was present in the godown when recovery of a large amount of *Wincirex cough syrup* containing *codeine phosphate* above commercial quantity was made. Ignoring the aforesaid incriminating materials and the statutory restrictions under Section 37 of the NDPS Act, trial court enlarged Bappa Islam on bail.

While considering the bail prayer of one Manojit Das, a co-accused, the aforesaid facts came to the notice of the court and a Rule was issued calling upon Bappa Islam to show cause why the bail granted to him be not cancelled. Apart from citing his innocence the said accused does not place on record any material in support of his plea of innocence. On the other hand, statements of witnesses and other materials show he was in the godown and was in possession of the *cough syrup* containing *codeine phosphate* above commercial quantity.

Order granting bail to Bappa Islam by the trial court suffers from legal infirmity. The said order does not advert to the aforesaid materials and the restrictions under Section 37 of the NDPS Act. On such score, the order is liable to be set aside.

That apart, report of the Investigating Officer shows Bappa Islam is a habitual offender and is involved in other cases relating to trafficking of narcotics. It may not be out of place to note a coordinate Bench of this court has enlarged Manojit Das on bail but Manojit Das stands on a different footing. He was not present in the godown when the seizure was made. His name does not appear in the agreement of tenancy executed by Sikha Das in favour of one Arnab Biswas. Even

statement of Jayanta Saha does not disclose his involvement in dealing with narcotics.

On the other hand, Bappa Islam was caught with narcotics in the godown. By no stretch of imagination he cannot be treated on the same footing with co-accused Manojit Das.

For the aforesaid reasons, we are of the opinion bail granted to Bappa Islam is illegal and his criminal antecedents do not justify his continuation of bail.

Accordingly, bail granted to Bappa Islam is cancelled. It shall be open to the Investigating Agency to apprehend him in accordance with law.

The Rule is made absolute.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)