

21.08.2023
Court No.1
Item. 08
(Suvendu)

CRM(NDPS) 582 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Matigara Police Station Case No. 234 of 2023 dated 30.03.2023 under Sections 21(c)/29 of the NDPS Act.

And

In the matter of: Md. Sarfaraj Alam @ Sarfraj Alam
.Petitioner.

Mr. Kishore Dutta
Mr. Dhiraj Lakhotia

For the Petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Kallol Nag

For the State.

1. From the materials placed before us, there appears to be several infractions of the NDPS Act, 1985. Two of which are of significance.
2. The first is the admitted discrepancy between the registration number of the vehicle which was disclosed to the police and the vehicle which was actually seized allegedly bearing the contraband substances. The second surprising factor is the manner of conducting the investigation. This would appear from the order of the learned Special Court, Siliguri dated 30th March, 2023.
3. The Court notes that although the case of the prosecution admittedly was that the Case Diary was not completed and the original copies of the statements made under Section 161 of the

Cr.P.C. of the accused persons were not drawn up, the I.O. prayed for police custody of the three accused persons on the extracts of the statements made under Section 161 of the Cr.P.C. There are other points of concern; the I.O. apparently failed to enquire into the ownership of the vehicle seized which is also noted in the order of the learned Special Court dated 10th April, 2023. The accused before us is one of the two passengers in the vehicle intercepted. The driver of the vehicle was granted bail on 11th May, 2023.

4. Learned counsel appearing for the petitioner also assails charge of conspiracy on the ground that there is apparently no meeting of minds under Section 29 of the NDPS Act as held by a learned Single Judge of the Bombay High Court in *Aryan Shah Rukh Khan Vs. Union of India*, 2021 SCC Online Bom 4127.

5. We expect that the above points should be taken into consideration at the time of investigation and trial.

6. We however note that the 180 days time for completing the investigation under Section 36(4) of the NDPS Act will be completed on 25th September, 2023.

7. We make it clear that the petitioner shall be entitled to pay for appropriate orders if there is any delay in the investigation subject the provisions of the NDPS Act.

8. Having regard to the quantity of the narcotic substances seized, we however reject the prayer for bail.

9. CRM(NDPS) 582 of 2023 is accordingly rejected and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

