

20.11.2023

Serial no.33

Court No.1

(CHC)

(Rejected)

*Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side*

CRM (NDPS) 843 of 2023

*In re : An Application for **Bail** under Section **439** of the Code of Criminal Procedure in connection with **Matigara** Police Station Case No. **781 of 2021** dated **30.07.2021** under Section 21(c) of the N.D.P.S. Act, 1985.*

-And-

In the matter of : **Mohan Singh**

... .. Petitioner

Mr. Amalesh Rai, Advocate

Mr. Arnab Sen Gupta, Advocate

Mr. Dhiraj Lakhotia, Advocate

Ms. Doli Mandal

... .. For the Petitioner

*Mr. Abhijit Sarkar, **Advocate***

Mr. Arjun Chowhury, Advocate

*... ..For the **State***

Petitioner renews prayer for bail.

Learned advocate appearing for the petitioner submits that, the law laid down with regard to the default bail was not correctly appreciated and applied by the learned coordinate Bench while rejecting prayer for bail on September 18, 2023 in CRM (NDPS) 623 of 2023. He refers to the order dated September 21, 2023 passed in IA NO: CRAN 1 of 2023 made in CRM (NDPS) 623 of 2023. He submits that, on review,

coordinate Bench allowed the petitioner to make subsequent application for bail.

Learned advocate appearing for the petitioner refers to seven judgments of the Supreme Court in support of his contention that, learned coordinate Bench misapplied and misunderstood the ratio of law regarding default bail.

State is represented.

Learned advocate appearing for the State submits that, the law on subject was discussed by coordinate Bench. No change in circumstances is agitated by the petitioner for grant of bail.

It is true that, petitioner is not agitating change in circumstances so far as grant of bail is concerned in this petition.

Petitioner relies upon several judgments of the Hon'ble Supreme Court reported in **(2001) 5 Supreme Court Cases 453 (Uday Mohanlal Acharya versus State of Maharashtra), (2020) 10 Supreme Court Cases 616 (Bikramjit Singh versus State of Punjab), (2017) 15 Supreme Court Cases 67 (Rakesh Kumar Paul versus State of Assam), (2023) 6 Supreme Court Cases 484 (Jigar Alias Jimmy Pravinchandra Adatiya versus State of Gujarat), (1994) 4 Supreme Court Cases 602 (Hitendra Vishnu Thakur and others versus State of Maharashtra and others)**, unreported decision of the High Court in **CRM (NDPS) 486 of 2023 (Sanjit Ray alias Sanjit Roy vs. Sate of West Bengal)** and **CRM No.8339of 2021 (Naimuddin Laskar @ Naim vs. The State of West Bengal)** in support of the contention that the coordinate Bench misconstrued and misapplied the provisions of default bail.

The judgments of the Hon'ble Supreme Court and of the High Court noted above were delivered prior to the orders passed by the coordinate Bench.

While rejecting the prayer for bail the coordinate Bench took into account the decision of the Hon'ble Supreme Court on the subject of default bail. The co-ordinate Bench found that, the petitioner was not entitled to grant of bail.

The petitioner applied for review of the judgment and order dated September 18, 2023. Such application being I.A.1 of 2023 was rejected by an order dated September 21, 2023.

While dismissing CRAN/1/2023 the coordinate Bench observed as follows:

"10. Accordingly, CRAN 1 of 2023 is dismissed. However, it is made clear that nothing in this order shall prevent the petitioner from making a subsequent application for bail, if the petitioner is so entitled in law otherwise."

The coordinate Bench's direction as noted above, should be understood in the context of the law prevailing with regard to grant of bail and the right to renew a prayer for bail.

An accused is entitled to renew his prayer for bail on the ground of change in circumstances. He is not entitled to question the legality, sufficiency or veracity of the order of the co-ordinate Bench.

As noted above, no change in circumstances is canvassed before us. The only point canvassed is that misapplication of law by the coordinate Bench. As coordinate Bench we cannot be called upon to revisit the decision of a coordinate Bench. We are not sitting in appeal over the decision of the coordinate Bench.

CRM(NDPS) 843 of 2023 is rejected.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

