

01.02.2024

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rejected

C.R.M.(NDPS) No. 66 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with S.T.F. Police Station Case No. 12 of 2021 dated 21.02.2021 under Sections 22(c)/29 of the NDPS Act.

And

In Re : Hanif Sk. petitioner

Md. Ejaz Quasim

Mr. Binod Kumar Mallick

....for the petitioner

Mr. Shekhar Barman

... for the State

1. Supplementary affidavit enclosing entire order-sheet be kept with record.

2. Learned Counsel for the petitioner submits he is in custody for more than four years. It is also submitted there is inordinate delay in trial. Accordingly, he prays for bail.

3. Learned Counsel for the State opposes the prayer for bail and submits report. Let the report be kept with record.

4. We have considered the materials on record. Petitioner and co-accused Syed Amir Husain and Md. Ataour Rahman were apprehended with narcotics above commercial quantity i.e. 8.34 Kgs. of Yaba Tablets while illegally transporting narcotics. It is argued prior information had not been diarised in terms of Section 42(2) of the NDPS Act. Section 42(2) of the NDPS Act comes into play in the event search and

seizure had commenced before sunrise or after sunset. Vehicle was apprehended prior to sunset and there can be no application of the aforesaid provision.

5. It is also argued that the leader of the raiding party is the investigating officer. Hence, trial is vitiated. Merely because investigating officer and complainant are the same, trial is not vitiated¹. Accordingly, infirmities pleaded before us are without substance and no case for bail on merits is made out.

6. On the issue of delay we note bail was granted to the co-accused, Syed Amir Husain and Md. Ataour Rahman. Their bail came to be cancelled by this Court. Thereafter, in 2022 they have absconded. Warrants, proclamation and attachment have been issued but they could not be arrested. It may be relevant to note that both the absconding accused are residents of Manipur. Under such circumstances delay in progress in trial is due to abscondence of co-accused and cannot be attributed to the prosecution.

7. It is strenuously argued the petitioner is not responsible for their abscondence. Materials on record show petitioner is a co-conspirator in the crime. Co-accused who were released on bail earlier have absconded. There is high likelihood that the petitioner, if released on bail, shall also abscond. Under such circumstances, we are not inclined to extend the benefit of bail to the petitioner on the ground of delay in trial which was

¹ *Mukesh Singh vs. State (Narcotic Branch of Delhi)*, (2020)10 SCC 120

engineered due to abscondence of the accused persons. Bail prayer of the petitioner is rejected.

8. In view of the fact that co-accused could not be apprehended inspite of issuance of processes, we direct the trial court to take immediate steps to declare the absconder as proclaimed offenders and proceed with the case against the petitioner with utmost expedition.

9. Parties shall co-operate with the trial in this regard and communicate this order to the trial court for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)