

13.03.2024
Sl. No.4
akd
[Rejected]

C. R. M. (NDPS) 340 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 13.02.2024 in connection with Gholia Police Station Case No.729 of 2022 dated 12.12.2022 under Sections 21(c)/29 of the NDPS Act and subsequently charge sheet submitted under Sections 21(b)/29 of the NDPS Act read with Section 419 of the Indian Penal Code.

And

In Re: ***Pankaj Roy @ Pankaj Lal***

... .. Petitioner

Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Mr. Abhijit Singh
Mr. Arijit Dev
Ms. Sagnika Banerjee

... .. for the petitioner

Mr. Debasish Roy .. Id. Public Prosecutor
Mr. Sandip Chakraborty

... .. for the State

1. It is submitted on behalf of the petitioner that he is a devotee of a religious sect. It is further submitted from the afternoon of 11.12.2022 petitioner was illegally detained by Gholia Police Station on the suspicion that he is involved in a theft case. Subsequently he was falsely implicated in the present case on the allegation of possessing 2.1 kgs. of *codeine mixture*. It is argued the FIR is an antedated document. In support of his plea, learned Advocate refers to the formal part of the FIR which records the written complaint was received on 12.12.2022 at 00.35 hrs whereas the written complaint came to be received on 03.35 hrs. on 12.12.2022. There is no signature of independent witness in the arrest memo. It is also submitted the statement of the independent witness was belatedly recorded on 20.12.2022 when petitioner was shown arrested in the theft case. Accordingly, he prays for bail.

2. In response to the submissions made on behalf of the petitioner, this Court called upon the Investigating Officer to submit affidavit to explain the inconsistencies in the FIR. Investigating Officer has submitted an affidavit. The same be kept with the record.
3. Learned Public Prosecutor submits prior information was received at the police station and diarised as G.D. Entry No. 874 dated 12.12.2022 at 00.35 hrs. Pursuant to the said information the police team proceeded to the spot which was diarised as G.D. Entry No. 875 dated 12.12.2022 at 00.55 hrs. After the operation the police team returned with the petitioner and the contraband at 03.03 hrs. vide G.D. Entry No. 877 and lodged written complaint at 03.35 hrs. vide G.D. Entry No. 879. He produced the original General Diary Register in support of his plea. He also contends recovery was duly videographed.
4. We have considered the materials on record in the light of the rival submissions at the Bar.
5. Petitioner has raised the following issues to improbabilise the recovery of narcotics :-
 - (i) He was illegally detained at the police station from the afternoon of 11.12.2022 presumably in connection with investigation of theft case.
 - (ii) Instead of implicating him in the theft case, he was falsely implicated in the present case involving possession of narcotics. Formal portion of the FIR refers to G.D. Entry No. 874 dated 12.12.2022 at 00.35 hrs. whereas written complaint was received at 03.35 hrs. on the same day.
 - (iii) There is no signature of independent witness in the arrest memo and the statement of the said witness was belatedly recorded.

6. We have considered the aforesaid issues in the light of the affidavit submitted on behalf of the Investigating Officer and the General Diary book placed before us.
7. In the affidavit the Investigating Officer candidly admitted that reference to G.D. 874 dated 12.12.2022 at 00.35 hrs. is an inadvertent error. Original diary register shows G.D. 874 recorded on 12.12.2022 at 00.35 hrs. relates to prior information regarding possession of narcotics. Thereafter, the police force left to work out the information after recording G.D. Entry No. 875 at 00.35 hrs. After recovery of narcotics they returned to the police station at 03.03 hrs. as per G.D. Entry No. 877. Written complaint was lodged at 03.35 hrs. (vide G.D. Entry No. 879) at the police station. Instead of referring to the aforesaid G.D. Entry the police officer advertently recorded the G.D. Entry relating to prior information i.e. G.D. Entry No. 874 in the FIR. However, petitioner vehemently argues that this aberration shows the FIR is an antedated and concocted document.
8. This Court is unable to accept the version of the petitioner for the following reasons :-
 - (i) The original General Diary book records the G.D. entries in *seriatim*. Although there are some corrections at the margin of the book, the order and the manner of recording of the G.D. entries prima facie does not raise suspicion.
 - (ii) It is the petitioner's case that he was illegally detained from the afternoon of 11.12.2022 till his implication in the present case at 03.35 hrs. on 12.12.2022. No complaint to any authority with regard to the illegal detention is placed before us. Time gap between registration of the case i.e. 00.35 hrs. (as per incorrect entry in the formal FIR) and the time of lodging of the written complaint i.e. (03.35 hrs.

as per endorsement thereon) is of little consequence as it is not the case of the petitioner that he had been illegally detained in the interregnum and falsely implicated.

(iii) This court is further fortified to come to such conclusion as recovery has been videographed.

(iv) Signature of the independent witness finds place in the seizure memo. In this backdrop neither absence of his signature in the arrest memo nor his belated examination are not material aberrations which go the root of credibility of the case.

9. In view of the aforesaid materials on record and as quantity of narcotics recovered is above commercial quantity restricting the discretion of this court to grant bail under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

10. On the score of delay in trial, we note petitioner is in custody for over a year. Charges have been framed and trial is about to commence. Prosecution assures this court that they shall conclude trial within one year from the next date fixed for recording evidence. In view of the aforesaid particularly the assurance given by the prosecution, we are not inclined to grant bail to the petitioner on the score of delay in trial also.

11. The application for bail is thus rejected.

12. Trial court is directed to expedite the trial and conduct the same in the light of the assurance given by the learned Public Prosecutor.

13. We also clarify all documents including the videography be handed over to the defence prior to commencement of trial.

14. Parties shall communicate a copy of this order to the trial court for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

