

02.04.2024

8

sdas

rejected

C.R.M.(NDPS) No. 507 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Hili Police Station Case No. 145 of 2023 dated 18.08.2023 under Section 21(c)/22(c)/23(c)/27A of the NDPS Act read with Section 46A(b) of Bengal Excise Act.

And

In Re : Parimal Das @ Mrityunjay Das petitioner

Mr. Kaushik Choudhury

....for the petitioner

Mr. Debasish Roy, learned PP

Mr. Manoranjan Mahata

..... for the State

1. Learned Counsel for the petitioner submits he is in custody for 214 days. It is also submitted no narcotics was recovered from his possession. He is no way involved in dealing in narcotics. One Rocky Singh has been granted pre-arrest bail by a co-ordinate Bench of this Court. Another co-accused Ganesh Roy has been granted protection from arrest. Accordingly, he renews his bail prayer.

2. Learned Public Prosecutor submits relevant statements had not been placed before the co-ordinate Bench who granted pre-arrest bail to Rocky Singh. Steps are being taken to challenge the order granting anticipatory bail to Rocky Singh before the Hon'ble Supreme Court. He relies on the statements of the independent witnesses viz. Roshan Chowhan

and Rajesh Gupta to establish involvement of the petitioner in the narcotics trade.

3. We have considered the materials on record. BSF personnel recovered a consignment of 117 bottles of phensedyl syrup containing codeine phosphate from the house of one Sanjay Choudhury who is in custody. Statements of Roshan Chowhan and Rajesh Gupta who are neighbours of Sanjay Choudhury show that the petitioner, one Rocky Singh, Ganesh Roy and Sandip Kundu had stored the consignment in the house of Sanjay Choudhury. These materials prima facie disclose involvement of the petitioner in illegal storage and dealing in narcotics for non-medicinal purposes. Possession and use of phensedyl syrup containing codeine phosphate for non-medicinal purposes attract provisions of NDPS Act.¹ However, a co-ordinate Bench of this Court in CRM(A) 4491 of 2023 granted anticipatory bail to co-accused Rocky Singh. We have perused the order. In the said order there is no reflection of the statements of the independent witnesses viz. Roshan Chowhan and Rajesh Gupta. The co-ordinate Bench merely referred to telephone calls between said Rocky Singh and other co-accused. Had these statements been considered by the co-ordinate Bench the fate of the case in all probabilities would have been otherwise. We are informed steps are being taken to assail the aforesaid order before the Hon'ble Apex Court. Another co-ordinate Bench of this Court in CRM (A) 835 of 2024

¹ Mohd. Sahabuddin & Anr. vs. State of Assam, (2012) 13 SCC 491

has granted interim protection from arrest to Ganesh Roy till the next date of hearing.

4. Petitioner strenuously urges that he stands on the same footing with Rocky Singh and Ganesh Roy and ought to be released on bail on parity. Grant of bail on principle of parity is not a mechanical exercise. In *Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and Anr.*² the Apex Court held whether a bail order can be treated as precedent and bail granted is a matter of future adjudication before the Court where such plea is raised. The Court observed as follows:-

“37. ...Whether an order granting a bail is a precedent on grounds of parity is a matter for future adjudication if and when an application for bail is moved on the grounds of parity on behalf of another accused. In the event that parity is claimed in such a case thereafter, it is for that court before whom parity is claimed to determine whether a case for the grant of bail on reasons of parity is made out.”

While considering the plea of parity the Court is required to examine the entire factual conspectus including the issue whether the order granting bail/anticipatory bail to co-accused had adverted to incriminating circumstances raised in the present proceeding. Testing the plea of parity from this perspective, we note order granting pre-arrest bail to Rocky Singh was passed without adverting to the relevant and clinching incriminating materials i.e. statements of independent neighbouring witnesses implicating the petitioner and others in the crime. Under these circumstances, order of the co-ordinate Bench granting anticipatory bail cannot be said to have binding effect vis-à-vis the aforesaid incriminating materials adduced

² (2021) 6 SCC 230

against the accused. When prayer for bail of the petitioner is resisted on the basis of incriminating materials which were not considered by the co-ordinate Bench, this Court cannot ignore such materials and mechanically grant relief on parity. Accordingly, we are not inclined to grant bail to the petitioner on principle of parity.

5. Application for bail is, thus, rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)