

26.04.2024

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sdas
rejected

C.R.M.(NDPS) No. 651 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Islampur Police Station Case No. 102 of 2022 dated 01.02.2022 under Sections 21(c)/23(c) of the NDPS Act.

And

In Re : Kabul

.... Petitioner

Mr. Amit Roy

Ms. Antara Mukherjee

....for the petitioner

Ms. Faria Hossain

Mr. Habib Hassan

..... for the State

1. Report filed in Court be placed on record.
2. Learned Counsel for the petitioner submits he is in custody for more than two years. It is also submitted three prosecution witnesses could not identify him. Accordingly, he prays for bail.
3. Learned Counsel for the State opposes the bail prayer and submits petitioner was arrested at the spot. His signature appears in the seizure memorandum and other contemporaneous documents. Three more witnesses are yet to be examined.
4. We have considered the materials on record. Allegations involve illegal smuggling of 925 bottles of phensedyl syrup. PWs. 1, 2 and 3 stated they had apprehended one person with the narcotics. Signature of the petitioner appears in

the seizure memorandum. These witnesses deposed due to lapse of time they were unable to identify the accused during trial. We find it difficult to accept this explanation. These witnesses were members of the raiding party and arrested the petitioner at the spot. Thereafter, they accompanied him to the police station. At the police station, he was kept in the lock-up. The witnesses are attached to the police station. They were with the petitioner for a considerable period and it was not a fleeting acquaintance. Be that as it may, there are other circumstantial/documentary evidence implicating the petitioner. Other witnesses are yet to be examined and prosecution assures trial shall be completed within six months from the next date fixed for recording evidence. Accordingly, we are not inclined to grant bail to the petitioner.

5. Application for bail is, thus, rejected.

6. We record our concern failure of PWs 1,2 and 3 to identify the accused.

7. Copy of this order be sent to the Director General, BSF, to examine the conduct of the said witnesses in the light of the aforesaid observations and if necessary initiate appropriate proceedings against them in accordance with law after giving opportunity of hearing to them.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)