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16-07-2024
(ct. no.28)
S. De
(Rejected)

CRM (NDPS) 1053 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure.

- A n d -

In the matter of : Santosh Kumar Nayak @ Santosh Naik.

.... Petitioner.

Mr. Ayan Bhattacharyya,
Mr. Kunal Ganguly,
Mr. Joy Chakraborty,
Mr. Sandip Dinda,

... For the Petitioner.

Mr. Gouranga Das,
Mr. Pradyat Saha,

... For the State.

The petitioner renews his prayer for bail which was rejected earlier on January 18, 2023.

The petitioner says that he is in custody for 1 year 10 months. There is no incriminating material against him. He may be the owner of the car from which 400 kgs. of Ganja was seized. But the prosecution has not been able to show till date that the car was used for transporting contraband item of commercial quantity with the petitioner's knowledge. Mr. Bhattacharyya, learned advocate for the petitioner relies on a decision of the Hon'ble Supreme Court in the case of **Harbhajan Singh Vs. State of Haryana** reported in **All India Reporter 2023 Supreme Court 2179**, at paragraph 7 whereof, the Hon'ble Supreme Court observed as follows :

"In the case in hand, the prosecution has failed to produce any material on record to show that the vehicle in question, if was used for any illegal activity, was used with the

knowledge and consent of the Appellant. Even presumption as provided for under Section 35 of the NDPS Act will not be available for the reason that the prosecution had failed to discharge initial burden on it to prove the foundational facts. In the absence thereof, the onus will not shift on the accused.”

Learned advocate for the State while opposing the prayer for bail says that out of five witnesses, one has been fully examined. The second witness is in the process of being examined. The trial is likely to be concluded within a short time period. The incriminating material against the petitioner is substantial. Huge quantity of contraband is involved. The prayer for bail should not be allowed.

We have considered the rival contentions of the parties. Earlier the petitioner’s prayer was rejected on merits. There is no change of situation. However, we do appreciate that the petitioner is in custody for quite some time. Whether or not the car in question, of which the petitioner seems to be the owner, was used for transportation of narcotics with the knowledge of the petitioner, is to be established at the trial. The decision of the Hon’ble Supreme Court relied upon by the petitioner was rendered in an appeal preferred against the final order of conviction. That decision may not help the petitioner at this stage.

CRM (NDPS) 1053 of 2024 is dismissed.

Considering the lengthy detention of the petitioner and prima facie material against him, we direct the learned Trial Court to expedite the trial to the fullest and complete the trial by delivery

of judgment within four months from the next date fixed for recording of evidence, without granting unnecessary adjournment to either of the parties and if necessary by fixing frequent schedules for examination of witnesses.

We clarify that in the event the trial is not concluded within the time period indicated herein, the petitioner will be at liberty to renew his prayer for bail.

Let this order be communicated by the parties to the learned Trial Court.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)