

JPD-18
Ct No.01
29.07.2024
S.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 349 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure Code, 1973 in connection with Seizure Case No.04/NDPS/CL/Phensedyl/Cus/Birpara PU/2022-2023 dated 22.03.2023 for alleged offence punishable under Sections 21/22/23/25/29 of the NDPS Act, 1985.

And

In the matter of: ANIL SHAW

...Petitioner

Mr. Kumar Shantanu

... for the petitioner

Mr. Ratan Banik,
Ms. Saptarshi Banik

... for the State

1. The petitioner contends that the petitioner is in custody for one year and four months. There was about a gap of eleven hours between the arrest of the petitioner and the seizure, the latter having taken place after the said period in the office of the Customs authorities.
2. It is further pointed out from statements made in several parts of the charge-sheet that the owner of the vehicle himself came up and made a statement that one Rajesh Sk, the permanent driver of the vehicle from which the contraband was seized, is in charge of booking, loading and unloading as well as movement of the truck and also that the said Rajesh

Sk. might have been primarily responsible for the consignment.

3. It is thus argued that the petitioner ought to be granted bail, since the rigours of Section 37 of the NDPS Act are not squarely applicable to him.
4. Learned counsel for the Customs Authorities vehemently opposes the prayer for bail and submits that the petitioner is guilty of suppression of material fact. A copy of an order passed in CRM (NDPS) 847 of 2023 is produced, wherein the petitioner's previous prayer for bail was refused on November 22, 2023. The petitioner has not disclosed the same before this court.
5. It is further argued that the petitioner was found to drive the vehicle containing the articles and as such his involvement in the offence was direct.
6. We find from the order dated November 22, 2023 that although the same deals with the time lapse between the arrest and seizure, the co-ordinate Bench observed that it is not uncommon that the incident occurs at a particular place and the victim is taken to the office of the Customs for the purpose of search and seizure in another.
7. However, we find that the time gap of eleven hours between the two is palpable in the present case, considering the vicinity of the place of arrest and the Customs office, which was not categorically discussed as such in the said judgment.
8. More importantly, the charge-sheet and its contents were not discussed by the Division Bench. In paragraph no.6 of the

said charge-sheet, it has been categorically recorded that the owner of the vehicle, who has not been arrayed as a co-accused, attended the office of the Customs and voluntarily tendered statement where he incriminated Rajesh Sk., the regular and permanent driver of the vehicle, for the alleged offence.

9. As per the statement of the said owner as recorded in paragraph 6 of the charge-sheet, total responsibility for the truck was given to the said Rajesh Sk who was responsible for the truck's freight amount or booking, loading and unloading and movement of the truck etc. According to him, all those activities were controlled and looked after by the permanent driver Rajesh Sk., who also used to collect payment for the whole month and after deduction of his salary and other expenses etc., he used to pay the balance amount to the owner of the truck.
10. The said Rajesh Sk., it may be recorded, is admittedly absconding.
11. Furthermore, on the basis of the statement of the owner, it is recorded by the Inspector of Customs in paragraph 13(a) of the charge-sheet that on the basis of the above facts and recorded statements of the arrested driver, that is, the petitioner, and owner of the vehicle, it was found that the said Rajesh Sk. is absconding. He has never replied to the summons in writing or presented himself for recording his statement. More importantly, the charge-sheet categorically records that the said absconding Rajesh Sk. (who was in

control and charge of loading and unloading) appears to be “primarily responsible for delivery of the consignment”, but in order to escape the investigation or any likely proceedings, he had temporarily engaged the present petitioner for the consignment in illicit trafficking.

12. Thus, there is sufficient material in the charge-sheet itself, and the prosecution version as reflected therein, to cast doubt on the involvement of the present petitioner in the alleged offence. Moreover, the petitioner is already in custody for one year and four months and as such we do not find any further necessity to keep him in incarceration.
13. We also find that for the above reasons, the rigours of Section 37 of the NDPS Act are mitigated.
14. Accordingly, CRM(NDPS) 349 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bond of Rs.20,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Court (NDPS Act), First Court at Jalpaiguri.
15. Moreover, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

16. Moreover, the petitioner shall not leave the territorial jurisdiction of the trial court throughout the period of trial and shall attend each and every date of trial.
17. It is further clarified that none of the observations made above, which have been arrived at for deciding the bail application and are tentative in nature inasmuch as the trial is concerned, shall prejudice the trial court while coming to its own findings in the trial.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)