

0609
2024

FRIDAY

COURT : 01
ITEM : 06
MATTER : 439
STATUS : REJECTED
BENCH ID : 1430
TRANSCRIBER : NANDY

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (DB) 396 of 2024

In Re:- An application for **Bail** under section **439** of the Code of Criminal Procedure filed on April 30, 2024 in connection with Seizure Case No. 02/CL/IMP/DRI/SLG/2011-12 dated 21.05.2011 (Corresponding to RC-220-2011-E-008-EOU-VI/E0-II/CBI (RC No. 03 of 2013) under Sections 120B/489B/489 of the Indian Penal Code. (G.R. Case No. 131 of 2020 arising out of G.R. Case No. 1535 of 2011).

And

In the matter of : **SANJAY KUMAR & ANR.**

.....Petitioners

Mr. Anirban Banerjee, Advocate
Mr. Debasisgh Mukhopadhyay, Advocate
Mr. Bhaskar Das, Advocate
Ms. Madhushri Dutta, Advocate

.....for the Petitioners

Mr. Sudipto Kumar Mazumdar, learned DSGI
Mr. Ajoy Kumar Singhania, Advocate
Mr. Sourab Kar, Advocate

.....for the CBI

1. The earlier application for bail filed by the petitioners was rejected on 10.08.2023. The fact discerned from the record revealed that immediately after having apprehended in connection with the afore-mentioned case, an application for bail was filed and ultimately granted with conditions to be strictly complied with. Such liberty was granted in the year 2011 but since thereafter the petitioners did not appear before the Court nor applied for relaxation of the conditions so imposed and remain aloof from the clutches of the Investigating Agency.
2. Learned Counsel for the petitioners, repeats the same submission which was made in an earlier round of litigation that the petitioners were convicted under the COFEPOSA Act in Uttar Pradesh and served the sentence for one year. It

appears that the they were freed from the Correctional Home on 11.01.2020 yet did not comply the conditions imposed at the time of granting bail.

3. Had the story made out by the petitioners, is taken to be true yet there has been a blatant violation of the conditions imposed at the time of granting bail in the year 2020. The story of being in Correctional Home relates to the year 2019 which can reasonably be inferred from the date of the release disclosed by the petitioners.
4. Learned Deputy Solicitor General appearing for the CBI, submits that despite constant raids and chase, the petitioners could not be apprehended or taken into custody having violated the conditions of bail.
5. In such view of the matter, we do not find the role and conducts attributable to the petitioners are justifying the story made out for not appearing on a day when it was fixed.
6. However, Counsel for the petitioners further submits that the co-accused who stands on the same footing that of the petitioners, was granted bail by this Court in CRM (DB) 304 of 2024 on 31.07.2024.
7. In order to ascertain the parity we invited the attention of the appearing Counsel to reveal the date on which the investigation/prosecution was entrusted upon the CBI by DRI. We are informed that the DRI handed over the investigation to the CBI in 2014.
8. Interestingly when the co-accused namely Nasel Sk. moved the application for bail before this Court, the DRI appeared and its lawyer submits that he has nothing to submit in the present case since the initial arrest was made by the Customs Authority for which a separate case has started.
9. We do not find from the said order that any submissions was

made to the Coordinate Bench that the DRI handed over the entire investigation to the CBI. The order does not indicate that the CBI was made a party or was served with an application. Therefore, in order to apply the doctrine of parity, it should be applied in all respect and not when the Court finds a distinction and/or difference in the mode and manner the case was moved and the order was secured. The order which is passed virtually on consent does not stand on a same footing at the time when the other application is fought at the behest of the respondent.

10. There is an antecedent of the petitioners in not complying the conditions imposed at the time of granting bail and also to keep themselves away from the clutches of the Investigating Agency for nearly over a decade and, therefore, this Court could not instill any confidence that, in the event, the petitioners are released they would strictly comply the conditions that may be imposed.
11. In view of the above, the prayer for bail is **rejected**.
12. The application being **CRM (DB) 396 of 2024** is **dismissed**.

(HARISH TANDON, J)

(APURBA SINHA RAY, J)