

02.12.2024
SL No.28
Court No.3
S.Gayen

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CRR 394 of 2024

**Mohan Chowdhury
Versus
The State of West Bengal**

Mr. Subham Ghosh
Mr. Mayank Roy

...for the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Abhijit Sarkar

...for the State.

1. This is an application under Section 528 read with Section 438 of the BNSS, 2023 against the order dated 6th June, 2023 passed in NDPS Case No. 134 of 2022 by the learned Special Judge, NDPS Act, Siliguri.
2. The petitioner would contend that the petitioner is in custody in connection with the above NDPS case since 25th November, 2022. Despite the expiry of the statutory period as provided under Section 36A(4) of NDPS Act, since the police report was not filed, the petitioner had applied for grant of statutory bail. Records would reveal that on 31st March, 2023 when the application for statutory bail was taken up for consideration after the petitioner having spent 186 days in judicial custody,

there was no subsisting application filed by the Investigation Officer seeking extension of the period of investigation for the Special Court under NDPS Act, to extend the period for investigation. On the said date, the learned Judge, Special Court under NDPS Act, Siliguri, by holding that the petitioner is entitled to statutory bail, ordered his release upon furnishing cash security of Rs. 20,000/- (Rupees Twenty Thousand) with a condition to appear on each and every date of the proceedings of the case.

3. Incidentally, on 5th of June, 2024 an application had been filed by the petitioner for reducing the bail amount. On 6th June, 2024 when the said application was taken up for consideration, the learned Special Judge, having found that the chargesheet in the case having already been submitted between granting of bail order and filing of the application, and according to learned Court the petitioner having not availed his statutory right to release on bail before submission of the chargesheet by observing that the petitioner had waived his right of statutory bail before submission of the chargesheet, rejected the bail petition.
4. The learned advocate appearing in support of the instant application would submit that admittedly, in this case the petitioner had availed the statutory bail, factum of the petitioner availing the statutory bail would corroborate from the Order No. 15 dated 31st May, 2023. He would submit that the learned Special Judge could only have cancelled the bail

provided, conditions for cancellation of such bail were available and could not had rejected the original bail petition which had already been disposed of by order dated 31st may, 2023. In support of his submission, he has placed reliance on the judgment delivered in the case of ***M. Ravindran vs. the Intelligence Officer, Directorate of Revenue Intelligence***, reported in **2021 (2) SCC 485**. He submits that this Court in the facts of the case may be pleased to set aside the order dated 6th June, 2024 and to enlarge the petitioner on bail by reducing the cash security.

5. The learned advocate appearing on behalf of the State would submit that in the instant case before the petitioner had availed of the order dated 31st may, 2023, the police report had been filed and having regard thereto, the learned Special Judge had rejected the bail petition. There is no irregularity in the order.
6. Having heard the learned advocates for respective parties and upon perusal of the case diary and the records, it would transpire that the petitioner was in judicial custody for 186 days when the bail petition for availing the statutory bail was filed. On the said date, there was no application by investigating officer seeking an extension, for conducting the investigation. Having regard thereto, the learned Special Judge had granted statutory bail under Section 36A(4) of the NDPS Act and directed to release the petitioner namely, Mohan Chowdhury upon furnishing cash security of Rs. 20,000/- with

a condition to appear before the Court on each and every day of the proceedings of the case.

7. Before the petitioner could furnish the cash security the police report was filed. The fact that the police report was filed after grant of statutory bail would also corroborate from the order dated 6th June, 2024. Having regard thereto and the petitioner having already availed the statutory bail, prior to filing of the police report and in view of the law declared in the case of ***M. Ravindran vs. the Intelligence Officer, Directorate of Revenue Intelligence (supra)***, once, an accused has availed statutory bail and the same is granted prior to submission of police report, the right which has already accrued does not get impeded by reasons of filing of the police report on a subsequent date.
8. In this case the petitioner did avail his right of statutory bail and the observation that the petitioner has not availed bail before submission of chargesheet is perverse and is unsustainable. In any event the learned Special Judge could not have rejected the bail petition by sitting in appeal over his own order.
9. Having regard thereto, I am inclined to enlarge the petitioner namely, Mohan Chowdhury on bail. Although, the petitioner has orally made a prayer for reducing the bail amount, I am not inclined to accede to the same. Therefore, the petitioner be released on bail upon furnishing cash security of Rs. 20,000/- (Rupees Twenty Thousand) only with two securities of like

amount, one of whom must be local, to the satisfaction of the learned Judge, Special Court, NDPS Act, Siliguri, subject to the condition that the petitioner shall appear before the learned Trial Court on every date of hearing until further order and shall not intimidate witnesses or tamper with evidence in any manner whatsoever, and in addition to aforesaid condition the accused/ petitioner shall also intimate his local address to the investigating officer prior to his release and shall not leave the jurisdiction of the jurisdictional Court, Judge, Special Court, NDPS Act, Siliguri.

10. In the event the accused/petitioner fails to appear before the learned Trial court without justifiable cause, the learned Judge, Special Court, NDPS Act, Siliguri shall be at liberty to cancel his bail automatically without reference to this Court.
11. The application accordingly stands allowed.

(Raja Basu Chowdhury, J.)