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15.07.2025
PA

CRM (NDPS) 100 of 2025

In Re:- an application for bail under section 483 of the
Bharatiya Nagarik Suraksha Sanhita, 2023.

And
In the matter of : **Safikul Islam**Petitioner

Mr. Sekhar Basu, Sr. Adv.For the petitioner

Mr. Ranadeb Sengupta
Mr. Rahul Ganguly For the State

Written Notes of argument on behalf of petitioner is taken
on record.

On 03.10.2024 while working out of a source information the raiding team apprehended a person namely Salim Sk. at Hero brick Kleen of Bamontala area under kaliachak police station while the other accused persons fled away. Thereafter 6kg 385gms of brown sugar in wet condition rapped with white colour cloth in a steel bucket was allegedly recovered from the exclusive possession of Salim Sk and the same was seized under a proper seizure list. Prosecution alleged that on interrogation the aforesaid co accused Salim Sk, the complicity of the present petitioner transpired wherein prosecution has described him as the financier of the entire chain of business. The petitioner herein was implicated in another case namely Kaliachak police station cases no. 1770 of 2024 under section 21 C /27(m)/29 of the Narcotic Drug and Psychotropic Substances Act (in short NDPS Act) with the allegation that huge

amount of unaccounted cash was recovered from his residence. While the petitioner was in custody in connection with aforesaid case no. 1770 of 2024, a prayer was made before the court below on 02.01.2025 for showing the petitioner as arrested in the instant case. The learned Judge upon perusal of the materials, so placed before him, was pleased to issue production warrant against the petitioner herein for consideration of the prayer made by investigating officer. On 06.01.2025 the petitioner was physically produced before the learned judge on the strength of aforesaid production warrant and learned trial judge was pleased to remand the petitioner in connection with the instant case after showing him arrested in the instant case.

Being aggrieved by the action taken by the police, as above, Mr. Basu learned Senior Counsel appearing on behalf of the petitioner submits that no contraband was recovered from the possession of the petitioner and he was never present at the spot wherefrom the contraband was allegedly recovered and seized.

Mr. Basu strenuously argued that the procedure followed by the magistrate that when an accused is arrested and taken to custody in one case, has been shown as arrested in another case has no recognition in law and in this context he relied upon a judgment of this court in **Hanif Mondal Vs. State of WB, (CRM No. 7502 of 2018)**.

He further submits that the petitioner was shown arrested in connection with the instant case on the basis of confessional statement made by co accused Salim Sk but such statement is inadmissible in evidence in view of the judgment passed by the Apex

Court in ***Tofan Singh Vs. state of Tamilnadu*** reported in **2020 SCC Online SC 882**.

His further contention is on 05.11.2024 petitioner and his relatives sold a property to one Habibul Rahaman and the consideration price of Rs. 22,70,000/- which was retained by him, was shown as recovered from his house on 30.11.2024, though aforesaid amount of money was validly earned by him from the aforesaid sale of the property. Owing to such recovery of money petitioner was implicated in the said earlier case being No. 1770 of 2024. However there is no iota of material that establishes even remotely that petitioner had earned that money from dealing with narcotic drug or psychotropic substance to attract section 27A of the Act of 1985. In fact the instant case was registered on 03.10.2024 and money was seized from his house on 30.11.2024 i.e. after lapse of 59 days from the date of seizure of contraband from co accused Salim Sk in connection with this case. His further contention is that the present case has been maliciously foisted upon petitioner owing to political rivalry. He further submitted that though petitioner was implicated in another NDPS Case being Kaliachak P.S. case no. 1330 of 2021, but the petitioner has been acquitted from the said case.

Accordingly Mr. Basu submit that the petitioner has been embroiled in NDPS Cases one after another, even though no contraband was found in his possession in any of the cases.

Mr. Randev Sengupta, leaned counsel appearing on behalf of the state vehemently opposed the bail prayer contending that the procedure adopted in the instant case for arresting the petitioner/accused person, though not provided in the Code of Criminal procedure or BNSS but he was arrested in accordance with

the guideline laid down by the Supreme Court in **Dhanraj Aswini Vs. Amar S. Mulchandni and another** reported in **(2024) 10 SCC 336**.

In this context he further referred a judgment of this court in the matter of **Sujay Krishna Vadra Vs. CBI** reported in **2024 SCC Online Cal 11828** where the principle laid down in **Dhanraj case** (supra) was followed. Accordingly Mr. Sengupta submits that the procedure adopted by the investigating officer, seeking arrest of the petitioner and the consequential order passed by the court below does not suffer from infirmity in the eye of law.

Mr. Sengupta further submits on the merit of the allegations that it is true that the name of the petitioner transpired from the statement of the co accused but his complicity in the instant case is writ large. The petitioner was implicated in the earlier case no. 1770 of 2024, wherein huge volume of unaccounted cash was recovered from his residence and the said case was registered on 03.01.2024 and on 05.01.2024 the petitioner executed an agreement for sale for an immovable property showing receipt of 20,lakhs as an advance for such sale. The petitioner in connection with the said case prayed for bail in CRM NDPS 29 of 2025, wherein he relied on the said notarized instrument to justify the possession of said unaccounted cash but this court while rejecting the bail prayer of the petitioner expressed his doubt on the execution of such unregistered instrument on 05.11.2024 soon after the registration of the case on 03.11.2024 and observed that execution of such document was unusual and recovery of huge sum of money from the house of petitioner indicates sufficient prima facie material in support of the prosecution case. In the instant application petitioner also annexed

said notarized document in support of bail prayer but the materials indicate the complicity of the petitioner in the instant case and further fortifies the contents of the statement of the co accused Salim Sk who described the petitioner as the financier of the entire business of narcotics. Accordingly the petitioner is very much involved in the illegal trade of narcotic substance in the role of financier as described by the co-accused and as such his bail prayer is liable to be rejected.

Upon consideration of the submissions made by the parties it is not in dispute that while the petitioner is in custody in connection with another case under the NDPS Act the prosecution made a prayer for showing the petitioner arrested in connection with the instant case and learned court below after considering submissions was pleased to issue production warrant against petitioner and fixed another date for production and for hearing the petition for showing the petitioner as arrested in connection with instant case. It is also admitted position when the petitioner was produced on 06.01.2025 on the basis of production warrant dated 02.01.2025, the court below after considering the materials in record ordered that the petitioner was shown arrested in the instant case.

This particular issue came up for consideration before the Supreme Court in the case of **Dhanraj Aswini Vs. Amar S. Mulchandani and another** reported in (2024) 10 SCC 336 wherein court held in para 45 as follow:-

45. *It was submitted on behalf of the appellant that a person already in judicial custody in relation to an offence, cannot have a “reason to believe” that he may be arrested on the accusation of having committed a different offence. However, we do not find any merit in the aforesaid submission. There are two ways by which a person, who is already in custody, may be arrested—*

(a) First, no sooner than he is released from custody in connection with the first case, the police officer can arrest and take him into custody in relation to a different case; and

(b) Secondly, even before he is set free from the custody in the first case, the police officer investigating the other offence can formally arrest him and thereafter obtain a Prisoner Transit Warrant ("PT warrant") under Section 267CrPC from the jurisdictional Magistrate for the other offence, and thereafter, on production before the Magistrate, pray for remand;

OR

Instead of effecting formal arrest, the investigating officer can make an application before the jurisdictional Magistrate seeking a PT warrant for the production of the accused from prison. If the conditions required under Section 267CrPC are satisfied, the jurisdictional Magistrate shall issue a PT warrant for the production of the accused in court. When the accused is so produced before the court in pursuance of the PT warrant, the investigating officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1)CrPC. At that time, the jurisdictional Magistrate shall consider the request of the investigating officer, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to remand the accused. [See : State v. K.N. Nehru [State v. K.N. Nehru, 2011 SCC OnLine Mad 1984] .]

In the said judgment supreme Court categorically observed that it would be incorrect to hold that a person while in custody 'cannot have a reason to believe' that he may be arrested in relation to a different offence and the court also made it clear that when procedural law does not preclude the investigating agency from arresting a person in relation to a different offence, while he is already under custody in some previous offence, the accused has also right to apply for anticipatory bail only on the ground that he is in custody in relation to a different offence.

In view of the ratio laid down in the aforesaid judgment a police officer can arrest a person in relation to an offence while he is already in custody in different offence, however such formal arrest does not bring the accused in the custody of the police officer as the accused continued to remain in the custody of the ld. Magistrate who remanded him to judicial custody in the first offence. Once such a formal arrest has been made the police officer has to make an application before the jurisdictional magistrate for issuance of

prisoner transit warrant without delay and if based on the requirements prescribed under section 267 of Cr.P.C. such warrant is issued by the jurisdictional court then the accused has to be produced before such court on the date and time mentioned on the warrant and upon production before the jurisdictional court, the accused can be remanded to police custody or judicial custody or can be enlarged on bail if applied for after considering the respective submissions.

While interpreting the term 'other proceeding' appearing in section 267 of the Cr.P.C., the Apex Court made it clear that other proceeding cannot be construed to exclude proceedings at the stage of investigation

In view of aforesaid settled proposition of law and in view of the procedure followed by the court in the instant proceeding, it cannot be said that while arresting the petitioner in the instant case, the procedure adopted by the court below, is not in accordance with law.

So far as the merit of the allegation, it appears that the petitioner was shown arrested on 06.01.2025 on the ground that the co accused Salim Sk described the petitioner as the financier of the entire business of narcotics and the petitioner also failed to properly accounted the money, that was recovered from his house, clearly demonstrate that there is prima facie reason to believe that the petitioner is guilty of the offence and also considering the fact that the petitioner has criminal antecedents and therefore if released on bail, commission of similar type of offence by the petitioner cannot be ruled out, therefore it can be said that at this stage petitioner failed to overcome the restrictions imposed in section 37 of the

NDPS Act. Accordingly prayer bail made by the petitioner stands rejected

CRM (NDPS) 100 of 2025 stands disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)