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(Rejected)

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**C.R.M. 9862 of 2018**  
**With**  
**C.R.R.67 of 2019**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 26.06.2019 in connection with NDPS Case No.348 of 2017 arising out of Lalgola P.S. Case No.427 of 2017 dated 13.09.2017 under Sections 21(c)/29 of the N.D.P.S. Act.

In the matter of: Surajit Roy @ Buro .... Petitioner

Mr. Shibaji Kumar Das.  
...for the Petitioner

Mr. Sanjoy Bardhan.  
...for the State

Mr. Arnab Chatterjee.  
...for the accused/Respondent  
[in CRR 67 of 2019]

**C.R.R. 67 of 2019**

Heard the learned Counsels appearing on behalf of the parties.

While considering the bail prayer of the petitioner who prayed for bail on parity with co-accused Md. Faruk Ali, we had issued suo motu rule upon Md. Faruk Ali @ Rintu to show cause why his bail be not cancelled.

In response to the rule, it is submitted on behalf of the accused/respondent Md. Faruk Ali @ Rintu that Assistant Sub-Inspector of Police was not being empowered by the State of West Bengal to undertake search and seizure under the

provisions of the N.D.P.S. Act. He places on record a notification in support of such submission. In view of inherent lack of jurisdiction of the seizing officer as aforesaid, bail prayer of the accused/respondent Md. Faruk Ali was allowed by the court below. He accordingly, prays the rule for cancellation of bail be discharged.

Learned Advocate appearing for the State submits that the aforesaid notification does not apply to search and seizure effected in a public place under Section 43 of the N.D.P.S. Act.

For effective adjudication of the issue raised before us, it is necessary to advert to the notification issued by the State of West Bengal. Relevant portion of the notification reads as under:-

*“No.1573-Ex.,dated 5<sup>th</sup> November, 1985.- In exercise of the power conferred by sub-section (1) of section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Governor is pleased to empower all officers of the Department of Excise and the Home (Police) Department not below the rank of a Sub-Inspector, and all officers of the Drugs Control Directorate of the Department of Health and Family Welfare, not below the rank of Inspector of Drugs, to exercise the powers mentioned in the said sub-section subject to general control and direction of the State Government.*

*2. This notification shall have effect on and from the 14<sup>th</sup> November, 1985.”*

Perusal of the notification would show that officers of departments of Excise and police not below the rank of Sub Inspector of Police have, inter alia, been empowered to effect search and seizure under Section 42(1) of the N.D.P.S. Act.

Section 42 of the N.D.P.S. Act empowers officers attached to the police and other departments specified therein to enter any building, conveyance or enclosed space to effect search in the manner as provided therein. The said provision also empowers the Central or the State Government, as the case may be, to specify by general or special order the category/rank of officers of the said departments who may exercise such powers.

On the other hand, section 43 of the Act provides that any officer of any of the departments specified in section 42 may undertake search and seizure in any public place. Section 43 reads as follows:-

**“S.43: Power of seizure and arrest in public place.-**  
*Any officer of any of the departments mentioned in section 42 may-*

- a) *seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act.*
- b) *detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.*

*Explanation:- For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop or other place intended for use by, or accessible to, the public.”*

A plain reading of the provision would show “any officer” attached to the departments referred to Section 42 of the Act

are empowered to effect search and seizure in a public place. Reference to Section 42 in the aforesaid provision is to qualify the departments to which the officers are attached and does not refer to the rank or post of the said officer.

Notification issued by the State of West Bengal must be seen in the light of the aforesaid scheme of the Act. Notification empowering officers not below the rank of Sub Inspector of Police to enter and search any building, conveyance or place under section 42 of the Act does not circumscribe the powers of the police officers to effect search in a public place which would include public conveyances, hotel, shop or any other places intended for use by or accessible to the public under section 43 of the Act. In the instant case, recovery from Md. Faruk had not been made pursuant to a search undertaken in any building, conveyance or private place. Narcotic substance was allegedly recovered from a bag which was carried by him in a public thoroughfare. Seizure of narcotic substance in the aforesaid manner does not attract the provision of Section 42 of N.D.P.S. Act but was effected under Section 43 thereof. Hence, the restrictive impact of the notification has no manner of application to the recovery from Md. Faruk Ali on a public road under section 43 of the Act.

It has also been argued that search in the present case involved search of a person as envisaged under Section 50 of the Act. Hence, search by ASI of Police is illegal as section 50 requires search to be conducted by an officer authorized under

section 42 of Act, who as per the notification must be one who is not below the rank of sub-Inspector of Police. No doubt search of the body of a suspect attracts section 50 which is to be undertaken by a duly authorised officer under section 42 of the Act. But the recovery in the present case from Md. Faruk Ali was not from his person/body but from a bag carried by him in his hand on a public road. Hence, we are unable to subscribe to the submission of the learned lawyer that the seizing officer lacked jurisdiction to effect the said seizure.

In the light of the aforesaid discussion, we observe that recovery of narcotic substance from a bag carried in the hand of the accused Md. Faruk Ali on a public road attracts section 43 of the Act and, therefore, the seizure of narcotic substance by an Assistant Sub Inspector of Police is not without authority of law or contravention of the notification issued by the State of West Bengal under Section 42 of the Act. Some arguments were advanced that the body of the accused was searched prior to recovery of narcotics from the bag carried by him in his hand. As narcotics in the present case was recovered from a bag carried by accused Md. Faruk Ali in his hand, we are of the view such recovery was effected under section 43 of the Act and seizure of the contraband by an ASI of Police under such circumstances did not suffer from lack of inherent jurisdiction. Issue of applicability and breach of pre-conditions of section 50 of the Act particularly when recovery was not from the body of the accused are questions of fact which may be thrashed out

during trial, if agitated, but does not impinge on the jurisdiction of the seizing officer to effect search and seizure in the facts of this case.

In view of the aforesaid facts, we are of the opinion that the order granting bail to the accused/respondent Md. Faruk Ali @ Rintu suffers from patent illegality and non-application of mind to the facts and circumstances of the case involving recovery of commercial quantity of narcotic substance under section 43 of the N.D.P.S. Act from a public place to which the statutory restrictions under Section 37 of the N.D.P.S. Act applies.

Hence, bail of co-accused-respondent, viz., Md. Faruk ali @ Rintu is cancelled. He is directed to surrender before the court below within a fortnight from date.

**C.R.M. 9862 of 2018**

With regard to the petitioner in CRM 9862 of 2018, we note that narcotic substance above commercial quantity was recovered from him pursuant to a search conducted by a Sub Inspector of Police.

In view of the aforesaid fact and bearing in mind the prima facie material disclosing recovery of narcotic substance above commercial quantity i.e. 3 grams of heroin from the petitioner and in the light of statutory restrictions under section 37 of the Act, we are not inclined to grant bail to the petitioner.

Accordingly, the prayer for bail of the petitioner is rejected.

In the backdrop of the aforesaid facts, trial court is directed to expedite the trial and conclude the same at an early date preferably within six months from the next date fixed before it for recording evidence provided that the co-accused/respondent Md. Faruk Ali surrenders before the trial court within a fortnight from date and all the accused persons co-operate with the trial court for expeditious disposal of the case. No unnecessary adjournment shall also be granted to the prosecution.

Xerox photostat plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.

**(Manojit Mandal,J.)**

**(Joymalya Bagchi, J.)**