

Serial no.3.  
September 25, 2020.  
SG

*CRM 6381 of 2020*  
*with*  
*CRAN 1 of 2020*

In Re. An application for bail under Section 439 of the Code of Criminal Procedure in connection with Dinhata Police Station Case No.19 of 2020 dated 11.01.2020 under Sections 25(1A)/25(1B)/35 of the Arms Act read with Section 21(C) of NDPS Act.

*In the matter of: Hiten Roy @Hiru*  
*...petitioner.*

Mr Sayan De  
*... for the petitioner.*

Mr Aditi Sankar Chakraborty  
Mr Tapan Bhattacharya  
*... for the State.*

The petitioner undertakes to affirm and stamp the petition as per the Rules within 48 hours of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

It is alarming that some matters are presented by the investigating agency in such a way that the court has no option but to grant bail.

It is elementary that some nexus of the arrested person with the commission of an offence must be evident for a prima facie view in such regard to be formed by the court. Often times, persons are arrested merely on the basis of the statements of others who are found to be in possession of drugs. While it cannot be lost sight of that the bigger players use mules on the streets; when such mules name the bigger players, some independent material must exist against such bigger players for a prima facie case to be found.

Unfortunately, for reasons that are not difficult to understand, the investigating agency takes no steps to unearth any material against the bigger players and the material on record shows the mere statements of persons found in possession of contraband against others and such others being arrested on such pretext. If the courts were to be guided merely by the statements or alleged statements of the persons found to be in possession of contraband, there would be anarchy. Nothing stops the investigating agency from naming any person against whom the investigator may have an axe to grind and suggest that such person was named by the arrested possessor of drugs.

In the present case, there is no independent material against the present petitioner, though it is more than likely that the present petitioner may be the king-pin of the racket. Courts cannot go by impression and hard facts and material are necessary even to form a prima facie opinion.

The menace that is the drug trade, which is fast growing in the State, cannot be tackled unless the investigating agency is diligent and is serious in taking appropriate steps against the bigger players. It appears that gaps are deliberately left for the bigger fish to slip out.

Let a copy of this order be forwarded to the Chief Secretary of the State and another to the Director-General of State police for appropriate measures to be taken.

As far as the present petitioner is concerned, since there is no independent material against him other than the alleged statement of a person arrested upon being found in possession of drugs, the petitioner is entitled to bail.

The petitioner is directed to be released on bail upon furnishing a bond of Rs.50,000/- (Rupees fifty Thousand Only) with two sureties of like amount, one of whom must be local, to the satisfaction of the appropriate court in Cooch Behar. The petitioner will not leave the district of Cooch Behar without the prior permission of the trial court. The petitioner will attend every date fixed for trial and any unexplained absence will entitle the trial court to cancel the bail without reference to this court.

CRM 6381 of 2020 and CRAN 1 of 2020 are disposed of.

**( Sanjib Banerjee, J. )**

**( Aniruddha Roy, J. )**