

CALCUTTA HIGH COURT
Criminal Miscellaneous Jurisdiction
Appellate Side

C.R.M 3152 of 2021

Rakesh Singh @ Rakesh Kumar Singh
-Vs.-
The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Bivas Pattanayak

For the petitioner : Mr. Sekhar Basu, LD. Sr. Adv.
 Mr. Rajdeep Majumder, Adv.
 Mr. Mayukh Mukherjee, Adv.

For the State : Mr. S.N. Mookherjee, Ld. A.G.,
 Mr. Saswata Gopal Mukherjee, Ld. PP.
 Mr. Sanjay Bardhan, Adv.
 Mr. Md. Sabir Ahmed, Adv.
 Mr. Rudradipta Nandy, Adv.
 Mr. Ranadeb Sengupta, Adv.

Heard On : 01.10.2021 & 07.10.2021

CAV on : 07.10.2021

Judgment On : 24.11.2021

Arijit Banerjee, J.:-

1. The petitioner seeks bail in connection with NDPS Case No. 17/21 corresponding to New Alipore P.S Case No. 65/2021, dated 19.02.2021 initiated under Sections 21(b)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the “NDPS Act”) pending before the Court of

the Learned Judge, Special Court under the NDPS Act cum Additional Sessions Judge, 4th Court at Alipore. The petitioner was arrested on 23.02.2021 and is in custody since then. The charge sheet was submitted on 03.05.2021, wherein Section 27A of the NDPS Act was added.

2. The argument of Mr. Sekhar Basu learned Senior Counsel appearing for the petitioner may be summarised as follows:-

- (i) There was no recovery of contraband item (cocaine) from the possession of the petitioner. About 76 gms of cocaine was recovered from a motor car in which three persons were found, viz, Somnath Chattopadhyay, Prabir Kumar De, and Pamela Goswami.
- (ii) The petitioner has been implicated on the basis of statements made by the aforesaid three persons who are co-accused, but whose names are not included in the charge sheet. Statements of co-accused persons are not admissible in evidence.
- (iii) Intermediate quantity of narcotics is involved. The Hon'ble Supreme Court, in the case of **Sami Ullaha v. Superintendent, Narcotic Central Bureau, 2009 CRI LJ1306** observed that where intermediate quantity of contraband is involved, “the rigours of the provisions of Section 37 of the Act relating to grant of bail may not be justified”.

- (iv) The initial prosecution case and the case in the charge sheet are diametrically opposite. Initially the case was that acting on source information, the police apprehended Somnath, Prabir and Pamela in a car. Upon interrogation, they pointed out where in the car the contraband item was concealed. The prosecution case in the charge sheet is that the petitioner planted the contraband item in the concerned car to put the aforesaid three persons in trouble as an act of revenge.
- (v) There is no material on record even to prima facie support the charge under Section 27A of the NDPS Act (financing illicit traffic and harbouring offenders).
- (vi) Section 42 of the NDPS Act has not been complied with.
- (vii) Several criminal cases may be pending against the petitioner, but none of them is under the provisions of the NDPS Act. Only in one case the petitioner was convicted and sentenced to one year imprisonment for entering into a scuffle with a police officer in a court premises. Such sentence was subsequently suspended by the Appeal Court.
- (viii) This is a politically motivated case and the petitioner has been framed. The false case has been prompted by the factum of the petitioner renouncing the membership of one political party and joining a rival political party.

3. The argument of learned Advocate General opposing the petitioner's bail prayer on behalf of the State may be summarised as follows:-

- (i) The NDPS Act the special statute aimed at consolidating and amending the law relating to Narcotic Drugs, to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic substances, to provide for the forfeiture of property derived from, or used in illicit traffic in Narcotic Drugs and Psychotropic Substances, to implement the provisions of the international conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith. The provisions of the Act should be strictly enforced to curb the menace of drug trafficking which has a highly damaging effect on the society at large.
- (ii) The petitioner is the kingpin of a drug racket. Naturally, he will not come in the fore-front and indulge in any overt act. He will pull the strains from behind the curtain as in this case.
- (iii) There is sufficient material to support the charge under Section 27A of the NDPS Act. Hence, the restrictions in Section 37 of the Act are attracted.
- (iv) The petitioner has been charge sheeted on the basis of statements of witnesses who are not co-accused persons. In

particular, the statements of **Nasir Khan (recorded on 30.03.2021 under Section 164 Cr.P.C.) and Nishat Alam**

@ Ruman Khan (recorded under section 164 Cr.P.C) have been relied upon. Reference has also been made to statements of one Sanjay Singh (page 2 of Memo of Evidence), Manoj Kumar Singh (page 3 of Memo of Evidence), Chandra Mohan Jha (page 4 of Memo of evidence), Sutapa Manna (Page 5 of Memo of evidence) and Pankaj Bagla (page 14 of memo of evidence). Relying on the aforesaid statements, it was submitted firstly, that the petitioner is involved not only in a solitary drug transaction but he is the head of a drug peddling racket; and secondly, on 23.02.2021, i.e. the date on which he was arrested, he had tried to escape to Patna.

- (v) The petitioner is a History Sheeter. 53 criminal cases are pending against him. His bail was earlier cancelled by this Court on the ground that he threatened the Investigating Officer of that case and the prosecution witnesses outside the Court room and thereby violated a condition of bail. Reference was made to the case of the **State of West Bengal v. Rakesh Kumar singh, 2015, SCC OnLine Cal 1338.**
- (vi) The petitioner is an influential person and is likely to tamper with evidence and threaten prosecution witnesses if released on bail.

(vii) Reliance was placed on the Hon'ble Apex court's decision in ***State of Kerala & Ors. v. Rajesh & Ors. (2020) 12 SCC 122.*** In particular paragraphs 17 to 20 of the judgment were relied upon, which are set out hereunder:

17. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that the accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:

"37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving

commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail.” (emphasis supplied)

18. This court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In ***Union of India v. Ram Samujh***, it has been elaborated as under:

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder

case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. State (UT of Goa) as under: (SCC p. 104, para 24)**

'24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in

order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.'

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail

are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the

court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression “reasonable grounds” means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the

accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the Cr.P.C., or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

- (viii) Reliance was also placed on the Hon’ble Supreme Court’s decision in the case of ***Union of India through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan, 2021 SCC Online Sc 782*** in support of the proposition that whether or not there was compliance with Section 42 of the NDPS Act is a question that should be raised in course of the trial and not at the stage of hearing of a bail application.
- (ix) In this case, the investigating agency made a prayer before the learned Trial Court for collecting voice sample of the petitioner. Such prayer was allowed by the Trial Court by order dated August 7, 2021. Such order was challenged by the petitioner before a learned Judge of this Court by filing an application under Sections 482/483 Cr.P.C. being CRR 1673 of 2021. The application was dismissed by the High Court by an order dated 20.09.2021. The resistance of the petitioner to the attempt of the investigating agency to collect his voice sample points towards the petitioner’s guilt.

4. We have considered the rival contentions of the parties. We have also perused the material in the memo of evidence filed on behalf of the State.

5. Certain things are clear. Firstly, there was no recovery of contraband items from the physical possession of the petitioner. Nothing was recovered from the person of the petitioner or any place over which the petitioner had exclusive control. We are conscious that mere non-recovery of contraband from a person's possession may not *per se* dilute the rigours of Section 37 of the NDPS Act.

6. However, even assuming that the petitioner had dominion or control over the contraband in question, admittedly intermediate quantity (76 gms) of cocaine was seized. It was urged on behalf of the State that the statements of witnesses would indicate that the petitioner was a regular purchaser of contraband items. However, the fact remains that in the present case only 76 gms of cocaine is involved. As observed by the Hon'ble Apex Court in the case of **Sami Ullaha (Supra)**, where intermediate quantity of narcotics is involved, it may not be justified to apply the rigours of the provisions of Section 37 of the NDPS Act relating to grant of bail.

7. Thirdly, the seizure of the Cocaine was from Prabir, Somnath and Pamela as would appear from the seizure list. The First Information Report dated February 19, 2021 also names those three persons as the accused. They have however not been named in the charge sheet. The prosecution case has changed completely from what it was at the time of filing of the FIR. The story in the charge sheet is completely different. While the case of

the prosecution initially was that recovery of the contraband item was made from Prabir, Somnath and Pamela who were intercepted in the Motor Car, the story in the charge sheet is that the petitioner planted the contraband item in the Motor Car in which those three persons were travelling to put them in trouble to take revenge for some personal enmity. *Prima facie*, this raises considerable doubt in our mind as regards the veracity of the prosecution case.

8. Fourthly, in so far as the offence under Section 27A of the NDPS Act is concerned, i.e. financing illicit trafficking and harbouring offenders, *prima facie* we do not find material evidence to support that charge. In our view, being involved in one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics. The word “trafficking” connotes continuous flow. There has to be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs. Similarly, financing illicit traffic would necessarily mean doing so on a regular or continuous basis. It is much more than purchasing or selling contraband items on one occasion. Such a solitary transaction would, in our *prima facie* opinion, not fall within the mischief of Section 27A of the NDPS Act. In this connection, one may refer to a decision of the Bombay High Court rendered on October 7, 2020 in ***Criminal Bail Application (Stamp) No. 2386 of 2020 (Reha Chakraborty v. The Union of India State of Maharashtra).***

9. Fifthly, we also notice that none of the 53 criminal cases pending against the petitioner is under the provisions of the NDPS Act. Though the

petitioner has criminal antecedents, there is no history of the petitioner dealing in narcotics in contravention of the provisions of the NDPS Act.

10. Prima facie there is nothing to show that the petitioner has previously violated any of the provisions of the NDPS Act.

11. As regards the State's argument that the petitioner was trying to abscond on the night when he was arrested, prima facie, the petitioner may be given the benefit of doubt that he was not going to Patna for the purpose of absconding. Since there was no restriction on his movement, merely from the fact that he was headed towards Patna may not necessarily indicate that he was trying to flee.

12. As regards the petitioner's reluctance to furnish voice sample, we do not think that such refusal would be a ground for denying bail to the petitioner when on an overall assessment of the material on record and on consideration of the applicable law, we are of the prima facie view that the petitioner may have a reasonably arguable case for acquittal at the trial. Refusal of the petitioner to furnish voice sample, may or may not have an adverse effect on his case at the trial, but we are not concerned with the same at this stage.

13. We are conscious about the salutary object of the NDPS Act and we have given due regard to the decision of the Hon'ble Apex Court in the case of ***State of Kerala v. Rajesh, (Supra)***. There cannot be any doubt that persons indulging in illegal trafficking in contraband drugs and psychotropic substances must be dealt with, with iron hands. The activities of such

persons have a widespread deleterious effect on the society at large. Countless members of the society, often of tender age, fall prey to the heinous and nefarious activities of drug peddlers. However, the decision in each case must depend on the facts of the case and no principle of law can be applied blindly to a given set of facts. In the facts of the present case, on an assessment of the material on record, we are of the *prima facie* view that the petitioner may not have committed the offence that he is charged with. Further, considering the past history of the petitioner which we have adverted to above, there is nothing on record to suggest that he is likely to commit an offence under the NDPS Act while on bail.

14. For the reasons aforesated we are of the view that the restriction in Section 37 of the NDPS Act would not apply. Assessing the nature and gravity of the alleged offence and the material on record and also in view of the fact that the petitioner has been in custody since February 23, 2021, we are of the view that the petitioner qualifies for bail but on stringent conditions.

15. Accordingly, we direct that the petitioner, namely, **Rakesh Singh @ Rakesh Kumar Singh** shall be released on bail upon furnishing a bond of Rs. 1,00,000/-, with four sureties of Rs. 50,000/- each, two of whom must be local, to the satisfaction of the Learned Judge, Special Court under the NDPS Act, Alipore, South 24 Parganas, and on further condition that he shall report to the Officer-in-Charge of the concerned police station once in a week until further orders. The petitioner shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the

witnesses and/or tamper with evidence in any manner whatsoever. He shall not travel outside West Bengal without the prior leave of the Trial Court and shall surrender his passport before the learned Trial Court immediately. The petitioner shall fully cooperate with the Investigating Authority in case of further investigation, if any.

16. In the event, the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.

17. The application for bail is, accordingly, allowed.

18. CRM No. 3152 of 2021 is accordingly disposed of.

19. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance of necessary formalities.

(BIVAS PATTANAYAK, J.)

(ARIJIT BANERJEE, J.)