

21.08.14
7/akd
(Bail Granted)

C. R. M. No. 7610 of 2014

In re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 08.05.2014 in connection with Ashoknagar Police Station Case No. 144 of 2014 dated 16.03.2014 under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act. (N-45 of 2014)

And

In the matter of: Sujoy Dey @ Balai
... .. Petitioner

Mr. Deep Chaim Kabir,
Mr. Litan Maitra
... .. for the Petitioner

Mr. Bitasok Banerjee
... .. for the State

Leave is granted to the learned Advocate-on-record of the petitioner to correct the name of the petitioner herein in the cause title of the Application for Bail.

Heard the learned advocate of both the parties.

The petitioner is seeking bail in connection with a case relating to offences punishable under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Deep Chaim Kabir, learned Advocate of the petitioner submits that 25 kgs. of *Ganja* was allegedly seized from the possession of the said petitioner and the petitioner herein is in custody for the last six months. Mr. Kabir further submits that the alleged seizure was made in the presence of Circle Inspector of police of the local area on the ground that no Gazetted Officer was

available, which, according to Mr. Kabir, is a breach of Section 50(1) of the N.D.P.S. Act, 1985. Mr. Kabir referred to the decision of the Hon'ble Supreme Court in the case of ***State of Rajasthan vs. Parmanand & Anr.*** reported in ***(2014) 2 C Cr. LR (SC) 319 (Paragraph 19)*** and submits that the accused should have been taken to the nearest Magistrate or the nearest Gazetted Officer so that the search could be made in presence of an independent officer. The relevant extracts from the aforesaid decision are set out hereunder:

"19. The idea behind taking an accused to the nearest Magistrate or the nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer....."

The learned Advocate for the State submits that the concerned Circle Inspector of police officer is a Gazetted Officer in whose presence search was conducted and the said police officer should also be taken as an independent officer.

We are unable to accept the aforesaid submissions of the learned Advocate of the State.

The Hon'ble Supreme Court has specifically held in the case of ***State of Rajasthan vs. Parmanand & Anr. (Supra)*** that the accused should be taken to the nearest Magistrate or the nearest Gazetted Officer in order to give the said accused a chance of being searched in the presence of an independent officer.

In the present case, it is not in dispute that the search was not conducted in the presence of a Magistrate or any other Gazetted Officer apart from a police officer.

Furthermore, it has been submitted by the learned Advocate of the petitioner that in the present case, investigation is complete and charge-sheet has been submitted.

Having considered the materials in the case diary and considering the principles of law laid down by the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Parmanand & Anr. (Supra)** and also considering the fact that the charge-sheet has already been submitted and the petitioner is in custody for the last six months, we are of the opinion that further detention of the accused/petitioner is not necessary.

Therefore, the accused/petitioner, namely **Sujoy Dey @ Balai**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the Narcotic Drugs and Psychotropic Substances Act, 1985, Barasat, Dist: North 24-Parganas.

The application for bail, thus, stands **allowed**.

(Pranab Kumar Chattopadhyay, J.)

(Tapabrata Chakraborty,

J.)