

**HIGH COURT OF TRIPURA
AGARTALA**

B.A. No.117/2020

B E F O R E

HON'BLE MR. JUSTICE S.G CHATTOPADHYAY

Iuchab Ali

.....Applicant(s)

On behalf of Alam Miah

.....Accused(s)

Versus

The State of Tripura

.....Respondent(s)

For the Applicant(s) : Mr. T.D.Majumder, Advocate.

For the Respondent(s) : Mr. Ratan Datta, PP.

Date of hearing &
Delivery of order : **29.10.2020**

O R D E R

[1] This is an application under Section 439 of the Code of Criminal Procedure, 1973 for granting of bail in favour of accused Alam Miah who has been arrested and taken into custody on 05.08.2020 in connection with Melaghar police station case No.2020 MLG 037 dated 05.08.2020 for offence punishable under Sections 22(c), 25

and 29 of the Narcotic Drugs and Psychotropic Substances (herein after the NDPS) Act, 1985.

[2] Heard Mr.T.D.Majumder, learned counsel appearing for the applicant as well as Mr. Ratan Datta, learned PP appearing for the state respondent. Mr. R.Datta, learned PP has produced the case diary for perusal and consideration of this court.

[3] The basic facts required for the purpose of disposal of the petition are that a suo moto complaint against accused petitioner Alam Miah and co-accused Ikbai Hussain Moisan was lodged by Poloram Das, Inspector of police and Officer-in-charge of Melaghar police station and registered as Melaghar P.S. Case No.2020 MLG 037 under Sections 22(c), 25 and 29 of the NDPS Act wherein it was alleged, inter alia, that pursuant to a secret information received from his source, the complainant intercepted the ECCO vehicle of the petitioner bearing registration No.TR-07-C-0642 on 05.08.2020 which was coming from Melaghar BOC side in excessive speed. After the vehicle was detained and brought to Melaghar police station along with the petitioner driver and his associates, search was carried out

inside the vehicle. During the search a secret box in the cabin of the said vehicle was detected from where 5 boxes containing brown sugar were recovered. The contraband was weighed and it was found that all the 5 boxes contained total 60 grams of brown sugar. Accordingly, the contraband was seized along with currency notes of Rs.4550/-and the petitioner driver and his associate Ikbal Hossain Moisan were arrested.

[4] Based on this suo moto complaint, the case was registered and the investigation was taken up. In this back drop of the circumstances, this bail petition has been filed under Section 439 Cr.P.C. on behalf of accused Alam Miah seeking his release on bail.

[5] Mr.T.D.Majumder, learned counsel appearing for the accused has contended that the accused has been in custody for 85 days and he will be entitled to bail on the ground of default after 5 more days unless the investigation is completed by then. It is further submitted by Mr.Majumder that law requires strict compliance of this mandatory provision limiting the period of custody during investigation, the infraction of which violates personal liberty

guaranteed under article 21 of the Constitution of India. In support of his contention Mr.Majumder has relied on the decision of the Apex Court in ***M.Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence*** reported in MANU/SC/0788/2020. It is further submitted on behalf of the accused that the accused is an agriculturist and he has been falsely implicated in this case of drug trafficking. Further submission on behalf of the accused petitioner is that ailing wife of the accused is admitted in Melaghar hospital and there is none to look after the wife. On this ground Mr.Majumder, learned counsel, urges for releasing the accused on bail on any condition whatsoever.

[6] Mr.Ratan Datta, learned PP on the other hand vehemently opposes the bail application and submits that under sub-section(4) of Section 36A, NDPS Act, 1985, the period of 90 days shall be construed as 180 days for the purpose of sub-section(2) of Section 167 Cr.P.C. if it relates to an offence punishable under Section 19 or Section 24 or Section 27A of NDPS Act or for offence involving commercial quantity under the NDPS Act,1985. It is, therefore, contended by Mr.Datta, learned PP that the accused in this

case cannot claim bail on the ground of default on expiry of 90 days. It is further argued by Mr.Datta, learned PP that the contraband recovered and seized from the possession of the accused is commercial quantity and there is a galloping incidence of the commission of such offence across the state. Further contention on behalf of the prosecution is that the accused was caught red handed by police while trafficking the illicit narcotic drug and his release on bail at this stage will seriously impair the investigation of the case. Further submission on behalf of the prosecution is that illness of wife cannot be a ground for releasing the accused on bail in a case involving offences under the NDPS Act. In support of his contention, Mr.Datta learned PP has relied on the decision of this court in **Haricharan Biswas vs. State of Tripura** reported in **MANU/TR/0061/2019**. Further submission on behalf of the prosecution is that Section 37 of NDPS Act puts an embargo on release of the accused on bail when the offence involves commercial quantity and the bail application is opposed by the public prosecutor unless the court is satisfied that 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.

[7] It emerges from the case diary that there are adequate incriminating materials against the accused supporting his involvement in the alleged offence of trafficking brown sugar. He was caught red handed by police along with the contraband. The owner of the vehicle has also affirmed that on the alleged date of occurrence the accused had taken her vehicle and later she came to know that police detained the vehicle along with the accused.

[8] Having appreciated the records produced and the submissions made on behalf of the parties, this court is of the considered view that this is no case where this court can extend the benefit of bail to the accused. In the result, the bail petition stands dismissed and the case is disposed of.

Return the CD to learned PP.

JUDGE