

Calcutta High Court

HON'BLE JUDGE(S): **SHEKHAR B. SARAF, SUGATO MAJUMDAR , JJ**

ARUN ROY V. STATE OF WEST BENGAL

CRM (NDPS) - 355 of 2022, decided on 09/12/2022

Narcotic Drugs and Psychotropic Substances Act (61 of 1985) , S.37— Criminal P.C. (2 of 1974) , S.439— Bail - Grant of - Offence of illegal possession of contraband - Seizure was made late in night on highway - Independent witnesses may not be available at such odd point of time - Mere fact that seizure list was computer print-out is not enough to conclude that whole prosecution case was concocted and manufactured - These questions of facts must be decided at trial - At this stage, it could not be said that whole prosecution case was a concocted one and contraband articles were planted - Considering prima facie materials available, bail cannot be granted. 2007 AIR SCW 7864-Followed

(Para 6, 7, 8)

Case Referred :

2007 AIR SCW 7864(Foll.)

Chronological Paras

Para No.(6)

Name of Advocates

Hillol Saha Poddar, Mousumi Das for Petitioner; Aditi Shankar Chakraborty, Ld. APP, Biswarup Roy for Respondent.

1. **SUGATO MAJUMDAR, J.:-** Heard the learned Counsel for the Petitioners perused the CD.
2. The learned Counsel for the Petitioners submitted that the investigation is a flawed one in as much as the procedure of seizure is shrouded with mystery. Admittedly seizure was made between 02:00 A.M. and 04:00 A.M. Seizure list is a computerized print out which very clearly and unmistakably shows that seizure list was not prepared on spot but was rather prepared in police station. According to the learned Counsel for the Petitioners it is manifest that the prosecution has falsely implicated the Petitioners and the entire prosecution case is a concocted one. Relying upon a Co-ordinate Bench's order of bail where bail was considered and granted with observations that seizure list

is a computerized print out, prepared at police station, the learned Counsel prayed for bail on the same principle.

3. It is further submitted by the learned Counsel for the Petitioners that no independent witness is there which vitiates the seizure. Accordingly he prays for bail.

4. Learned Additional Public Prosecutor vehemently opposed the bail on the ground that allegation is grave and serious and strong incriminating elements are there against the Petitioners. The mere fact that the seizure list is a computerized print does not by itself dilute the rigours of section 37 of the NDPS Act.

5. Heard the learned Counsel for both the parties on perusal of CD.

6. Seizure was made between 02:00 A.M. and 04:00 A.M. on the highway, confronted with arrival of the contraband substances. Independent witnesses may not have been available at that place at that time. Mere fact that the seizure list is a computer printout is not enough to come to a conclusion at this stage that the whole prosecution case is a concocted and manufactured one. All these are questions of facts to be decided at trial. Each case is decided on its merits and on the basis of facts and circumstances peculiar to itself. Bail in the earlier case was granted in view of facts and circumstances specific to that case. Conspectus of facts are different here. It is worthwhile to remember the observation of the Supreme Court of India in *Directorate of Revenue v. Mohammed Nisar Holia* [(2008) 2 SCC 370 : **(2007 AIR SCW 7864)**]: "Draconian provision which may lead to a harsh sentence having regard to the doctrine of "due process" as adumbrated under Article 21 of the Constitution of India requires striking of balance between the need of law and enforcement thereof, on the one hand, and protection of citizen from oppression and injustice on the other."

7. In view of specific fact and circumstances peculiar to the case itself we cannot infer at this stage that the whole prosecution case is a concocted one

and contraband articles were planted, diluting the rigours of section 37 of the NDPS Act.

8. Therefore, considering the *prima facie* materials available in Case Diary we are not inclined to allow bail and the same stands rejected.

9. It is needless to mention we have not expressed our opinion on the merits of the case and the observations made herein are only tentative in nature.

10. I agree.

Petition Allowed