

CIS REGN.NO. NDPS/12/18
THE SPECIAL COURT UNDER NDPS ACT, SILIGURI
CR (NDPS) 08/18

Order no. 106 dated 16.03.2021

The accused Deendayal Saha is produced from J.C. Today is fixed for hearing of the bail application filed by the accused on 10.03.2021.

The Learned Advocate for the accused has made a lengthy argument in favour of the application for bail filed by the accused. The Learned Advocate's argument was mainly two-fold. He submitted that the prosecution has failed to bring in witnesses and the trial has not sufficiently progressed as is necessary in cases of custody trials. The other point of contention of the Learned Advocate for the accused is that the entire prosecution case rests on the alleged voluntary statement of the accused under Section 67 of the NDPS Act and, in view of the decision of the Hon'ble Supreme Court in Tofan Singh -vs- State of Tamil Nadu, such statements recorded in presence of the NCB officials shall have no evidential value and, as such, the accused is entitled to bail. The Learned Advocate for the accused has submitted that the contraband was not recovered from the possession of the accused. The Learned Advocate for the accused has referred to a few decisions to fortify his argument that an accused is entitled to bail if the prosecution case has nothing to rely upon except the alleged voluntary statement of the accused recorded under Section 67 of the NDPS Act.

The Ld. P.P raises strong objection and submits that there has been no change in situation and the bail applications on the same submissions which were rejected earlier have not been assailed by the accused.

The Learned Advocate had, indeed, made similar submissions but today he has tried to fortify his contentions with decisions of the Hon'ble Courts. The Learned Advocate for the accused has relied upon the decision dated 09.03.2021 of the Hon'ble Calcutta High Court in C.R.M no. 9386 of 2020 [Sanchita Mondal Alias Beauty Paul-vs- Union of India] wherein the Hon'ble Court has been pleased to grant bail to the petitioner who was in custody for 5 years and 8 months. The accused in the present case before me is not in custody for such long period of time. The Learned Advocate for the accused has also referred to a decision of the Hon'ble Bombay High Court (only an

extract of the decision is supplied without details of citation or names of parties), a decision dated 22.02.2021 of the Hon'ble Calcutta High Court (C.R.M 471 of 2021) and a decision of the Hon'ble Calcutta High Court dated 19.02.2021 (C.R.M 9200 of 2020) wherein the Hon'ble Courts have been pleased to grant bail. However, in all these decisions, the prosecution was only depending on the statement of the co-accused. In the present case before me, the prosecution is depending on the alleged voluntary statement of the accused himself and not merely the statement of a co-accused. As such, the facts of the referred decisions are not in unison with the present case.

I have, in the order dated 24.11.2020, had dealt with the question of statement under Section 67 of NDPS Act and there is nothing before me to reconsider the said order and come to a different conclusion.

It is true that the accused who is in custody has the right of speedy trial. The intervening year of pandemic cannot be ignored. Still, the prosecution is directed to complete the trial by bringing in witnesses on dates fixed without fail.

The prayer for bail is rejected.

To 29.4.2021 for further evidence of PW-1.

Issue summons accordingly.

Dictd & Corrtd by me :

Sd/-

Judge (Special Court)

NDPS Act, Siliguri

Sd/-

Judge (Special Court)

NDPS Act, Siliguri

WB00811.

Judge, Special Court

(NDPS Act), Siliguri .

Judge, Special Court
(NDPS Act), Siliguri .