

In the Court of the Judge (Special Court) under NDPS Act, Siliguri

CR (NDPS) Case No. 08 of 2018

Union of India -Vs- Dindayal Sah

Order no. 111
Dated 05/10/2021

Today is fixed for production and further examination of P.W. 1.

The accused Dindayal Sah is not produced before this Courtroom to avoid overcrowding.

Ld. PP is present before this Court.

No witness is present.

Ld. PP prays for time on the ground that the witness (PW-1) is deposing before the Ld. Judge, NDPS Court at Malda and as such, could not attend this Court. It is further submitted that this witness has to depose in matters under NDPS Act for NCB in Courts throughout West Bengal and there has been no laches on the part of the prosecution to bring witness and summons was also duly served upon the the witness.

The Ld. Advocate for the accused files an application for bail and vehemently opposes the prayer for adjournment. It is submitted that the prosecution/ complaint has been seeking adjournments and the examination of the witness which commenced on 07.03.2020 could not be concluded till date. The Ld. Advocate urged that the accused is entitled to speedy trial as he is in custody.

Ld. P.P. and the Ld. Advocate for the accused both submit when asked that no bail petition is pending or was rejected by the Hon'ble High Court in connection with the instant case.

Ld. P.P. raises objection against the bail application.

Carefully perused the record. It appears that the contraband was not seized from the possession of the accused Dindayal Sha and his name surfaced in the statement made u/s. 67 of NDPS Act by the other co-accused Gopal Mahato who is presently absconding.

Ld. PP submits that the accused has confessed his guilt in his statement u/s. 67 of the NDPS Act which he has written in his own handwriting. On perusal of the documents available on record it is found that the other accused Gopal Mahato has claimed that the accused Dindayal Sha is his tractor driver. No document to that effect has been filed by Dindayal Sha. None of the NCB officials have identified that the person who abandoned the tractor and ran away was Dindayal Sha. The confessional statement of Dindayal contains provisions relating to law from which it can be suspected that the same was made under the direction of NCB officials. The confession of the accused Dindayal Sha before the NCB officials would have the same effect as Section 25 of Evidence Act. The accused Dindayal Sha had himself arrived at the NCB office on receiving notice. Thus, at this stage apart from the confessional statement of the accused Dindayal Sha recorded in presence of NCB officials and the statement

of co-accused there is no incriminating material against him. The accused being in custody has right of speedy trial. This date was specifically fixed for evidence of PW-1 in presence of the witness taking his convenience into consideration. The liberty of the accused cannot be curtailed repeatedly on the ground of non-availability and inconvenience of the witness. The accused is in custody since 15.02.2018.

Considering all the above facts, I am inclined to allow the prayer for bail.

Hence, it is

Ordered

The accused Dindyal Sha be released on interim bail upon furnishing bail bond of Rs. 1,00,000/-(Rupees One Lac) with two sureties of Rs. 50,000/-(Rupees Fifty Thousand) each, one of whom must be local with landed property within the jurisdiction of this Court, with a condition to remain present before this Court on all dates, subject to satisfaction of the Ld. ACJM, Siliguri.

To 22.12.2021 for appearance, if on bail and further examination of P.W. 1.

Issue summons accordingly.

D/c by me

Sd/-

Judge, Special Court
NDPS Act, Siliguri

Sd/-

Judge, Special Court
NDPS Act, Siliguri
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