

11.3.2024

Accd Jahangir Ali Mondal, Imran Sheikh @ Raja, Md. Dilnawaz and Mahadeb Nayaban are produced from J.C. They all are taken into custody and remanded further to J.C till 22.3.2024.

Ld. Advocate Pritam Kundu files fresh vakalatnama on behalf of accd Mahadeb Nayaban. Let it be kept with the record.

I.O is present with C.D. No final report submitted as yet.

I.O has placed a written prayer for further J/C of all the four accd persons for the interest of investigation.

Ld. Counsel of accd Md. Dilnawaz files a bail petition praying for bail on the ground that the accd was falsely implicated in this case and is not connected with the alleged offence and that the prosecution story was manufactured and concocted and the petitioner was made victim of circumstances with some ulterior motives and that the petitioner is a local respectable person and there has been no chance of absconson or evading investigation and as such petitioner has prayed for bail on any terms and conditions.

Copy served upon the prosecution and strong objection raised.

The ld. Counsel of the accd Md. Dilnawaz while arguing for bail of the petitioner has put the Court in same bracket with the prosecution and unfortunately made some remarks regarding the course of investigation being not known to the defence and when Ld. P.P has resisted such submission and informed that everything done during investigation were duly placed before the Court and there has been reflection in the order sheets. Prosecution further reminded the defence regarding its shortcomings and scope of flying in the investigation perihpery on its choice since defence has no right whatsoever to monitor or dictate investigation in any manner.

It has been submitted that the accd/petitioner has not been named in the FIR and he was apprehended on the basis of statement of the co-accd which is not permissible under law and that nothing like contraband substance recovered from him and that there has been no primary evidence regarding nexus of the petitioner in the alleged offence. The defence has raised question regarding jurisdiction of the court when on earlier occasions the bail was rejected on the ground of applicabilit of Section 37 NDPS Act being one of the other grounds for rejection of bail and submitted that the court perhaps acting at the instance of the prosecution and believing whatever the prosecution has been placing before the court and ultimately rejecting the bail prayer of the accd person.

The Ld. P.P further submitted that there has been sufficient materials against the present petitioner prima facie confirming his involvement in the conspiracy hatched to design a plot against one person. Further submitted that since the case against the present petitioner has been concerning U/s. 29 NDPS Act, there cannot be any recovery of contraband substance from

the petitioner.

The ld. Defence counsel also submitted that had it been a case of involvement of the petitioner in the alleged offence, he would not have been made himself available in his own house and such would prove his innocence, however the consideration for bail cannot stand on surmise though the claim of the petitioner is not formed sacrosanct so far as the materials on C.D are concerned.

Having hd both sides and perusing materials on record I find that the prayer for bail of the petitioner Md. Dilnawaz was lastly rejected on 26.2.24 after consulting the C.D and the materials available on record and though I do not find any development subsequently that can prompt the defence to endeavour for bail and further in view of the direction of the Hon'ble Courts that prayers for bail cannot be made periodically as of right without having any specific ground for development in the process of investigation that might favour the defence, however this court has discussed and noted the submissions of the defence as well as prosecution minutely and it is apparent on record that the case involves commercial quantity of contraband substance and there has been sufficient materials to consider prima facie involvement of the petitioner and further that as per requirement of Section 37 NDPS Act, there has been no material to held primary innocence of the petitioner and that he would not commit similar offence if be enlarged at this stage. Further to note that the petitioner was found involved in this case indeed on the basis of statement of co-accd person, but such statement was not U/s. 161 Cr.P.C or U/s. 167 Cr.P.C rather such statement was confessional one and recorded U/s. 164 Cr.P.C.

Considering the facts & circumstances of the case as well as the specific disclosing materials available on C.D and record confirming prima facie involvement of the accd/petitioner in the larger conspiracy when merely 2 kg Charas were recovered in open daylight in a congested and market area of Kolkata in front of busy Dhakuria Railway Station, it must have grave concern and this Court does not inspire from the submission of the defence placed in favour of petitioner Md. Dilnawaz and accordingly prayer for bail of Md. Dilnawaz is considered and rejected at this stage.

To 22.3.2024 for production and I.O report.

C.D be returned.

D/corr by me,

4<sup>th</sup> ASJ, Alipore.

**( J.O Code—WB00729)**