

Criminal Miscellaneous Case No. 65118 of 2023

Present

Mr. Justice Md. Rezaul Haque

And

Mr. Justice Md. Khairul Alam

Order dated 14.12.2023

Mr. Md. Shaheen Khan, Advocate.

.....For the petitioner.

Mrs. Yesmin Begum Bithi, D.A.G.

.....For the opposite party.

This is an application for bail of the accused petitioner Md.

Delowar Hossain who has been convicted under sections 25B(2) of the Special Powers Act, 1974, and sentencing him to suffer rigorous imprisonment for a period of 3 (three) years and to pay a fine of Tk. 5,000/-, in default, to suffer rigorous imprisonment for 1 month more.

Mr. Md. Shaheen Khan, the learned Advocate appearing on behalf of the convict petitioner has submitted that the petitioner has been convicted in the aforesaid manner for allegedly recovery of 100 bottles of phensidyl. Learned Advocate has contended that the petitioner voluntarily surrendered on 24.9.2023 and since then he has been languishing in jail custody. Learned Advocate has further submitted that no incriminating article was recovered from the possession of the convict petitioner and there is no iota of evidence against the convict petitioner, moreover, seizure list witnesses did

not support the prosecution case and as such the impugned judgment and order of conviction has no basis at all. Learned Advocate has further submitted though the convict petitioner is an FIR named accused yet he was not arrested from the place of occurrence. Learned Advocate has further submitted that the convict petitioner could not proper regular appeal within time, as such, he has no other alternative but to file an application under section 561-A of the Code of Criminal Procedure against the Judgment and order of Conviction. Learned Advocate has earnestly submitted that the petitioner has already suffered 4 months, out of his sentence, and there is no chance of early hearing of the Rule, accordingly, he has prayed for bail.

The learned Deputy Attorney General appearing for the opposite party opposes the prayer for bail.

Heard the learned advocate of both sides and perused the impugned judgment, deposition of the P.Ws and other documents annexed to the application for bail.

Considering the Submission of the learned Advocate as to that the petitioner may be acquitted after hearing of the Rule and he has already suffered 4 months out of his sentence and there is no

chance of early hearing of rule, we find substance in the submission of the learned Advocate of the petitioner.

Accordingly the application is allowed.

Let the petitioner Md. Delowar Hossain son of late Ajahar Ali, be enlarged on bail till disposal of the Rule on furnishing bail bond subject to the satisfaction of the learned Chief Judicial Magistrate, Lalmonirhat.