

12.02.2024

Mr. Md. Abdul Alim Miah with
Mr. Md. Motiar Rahman, Advocates

----For the Convict-Appellant-Petitioner

Mr. S.M. Asraful Hoque, D.A.G with
Ms. Fatema Rashid, A.A.G
Mr. Md. Shafiquzzaman, A.A.G. and
Mr. Md. Akber Hossain, A.A.G

-----For the State

This is an application for bail of convict appellant petitioner Md. Mahfuzur Rahman.

The petitioner along with 5 (five) others was convicted under Table 9(kha) appended to section 19(1) and 25 of the Madak Drabya Niyontran Ain, 1990 and sentenced to suffer rigorous imprisonment for 15 (fifteen) years with a fine of Tk-100,000/- (one lac) in Sessions Case No.402 of 2020. Six (6) others were convicted under the same section of law and sentenced to suffer 10 (ten) years rigorous imprisonment with fine of Tk-50,000/- each while another was convicted under the same section of law and sentenced to suffer 5(five) years rigorous imprisonment with a fine of Tk-5000/-.

The learned advocate for the petitioner submits that the petitioner was arrested by the police on 21.06.2015 and since then he is in prison and has already served out about 9(nine) years of his sentence out of 15 years.

He then submits that in the present case the statement of the informant is totally contradictory with the deposition of the manager of filling station, alleged eye-witness. Most of the witnesses are members of

law enforcing agency and thus interested person and some are hearsay witness. On plain reading of the statement and cross-examination of the witnesses it is crystal clear that the prosecution made false, doubtful and contradictory statements so far as it relates to appellant petitioner. The prosecution witness made self-contradictory statement and statements contradictory to each other on material point of the case. The statements of the witnesses itself prove that the appellant petitioner is not guilty of the charge of recovery of yaba from his custody.

He further submits that the occurrence took place on 20.06.2015 at 11.10 hours and F.I.R. was lodged on 21.06.2015 at 10.05 hours after arresting the petitioner and then he was sent to the Court from police station on 22.06.2015 which is apparent that the appellant had been kept in police custody more than 24 hours without having any order of the magistrate which is clear violation of the constitution as well as the Code of Criminal Procedure.

The learned advocate next submits that the appellant-petitioner was taken all together 14 days of remand and as a consequence of that he made confessional statement implicating himself as a carrier of recovered Madok, Yaba which was not true and voluntary at all but the Court's below without considering that aspect convicted him illegally. The prosecution could not prove the case against the convict petitioner beyond reasonable doubt and there is every chance of success in the instant appeal. The

petitioner is not a habitual offender and previous record of the appellant is nil.

The learned advocate finally submits that there are as many as 6 criminal appeals from the same judgments pending before this Court and those appeals are not ready for hearing for which the present appeal cannot be heard within a reasonable time. 4 (four) convict appellants have already been enlarged on bail by various Division Benches of this Court.

On the other hand the learned Deputy Attorney General vehemently opposes the prayer for bail. He submits that the appellant petitioner made confession and the convict who have been enlarged on bail are not of the same footing of the present convict appellant petitioner.

We have heard the submissions of learned Advocates of both the parties, perused the FIR, charge sheet, testimony of the witnesses, impugned judgment and other connected documents on record wherefrom it transpires that the occurrence took place on 20.06.2015 and the FIR was lodged on 21.06.2015 and since then the convict appellant petitioner is in jail for more than 8(eight) years 7(seven) months. It is also uncertain when the hearing of the appeal would be concluded as 6 more appeals are pending out of the same judgment.

Considering the duration of suffering in prison and facts and circumstance of the case, we find substance in the contentions of the learned Advocate. Therefore, we are inclined to enlarge the appellant petitioner on bail. Accordingly, the prayer for bail in

the aforesaid criminal appeal is allowed.

Pending hearing of the appeal let the convict-appellant-petitioner Md. Mahfuzur Rahman, son of Md. Jamshed Miah be enlarged on ad-interim bail for a period of 06(six) months from date on furnishing bail bond subject to satisfaction of the trial court i,e Additional Sessions Judge, 1st Court, Feni.

Communicate the order at once.

[Ashish Ranjan Das, J]

[Md. Riaz Uddin Khan, J]