

(1990) 09 CAL CK 0022
In the Calcutta High Court
Case No : Criminal Misc. No. 2499 of 1990

Kalam Khan (Accused)

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 36A

Citation : 95 CWN 183

Hon'ble Judges : S. Ahmed, J;A. K. Bhattacharjee, J

Bench : Division Bench

Judgement

Shamsuddin Ahmed, J.—This is an application for bail u/s 439 CPC. it appears that by order dated 4.8.90 the learned judicial Magistrate, 4th Court, at Howrah has remanded the accused to jail custody till 18.8.90. Possibly thereafter, he has again been reminded. Provisions of section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the said act) provides that a Magistrate can only remand a person accused of offences punishable under the said Act for a maximum period of 15 days. If the learned Magistrate considers that it is not necessary to detain him further he has to refer to the learned Judge, Special Court, constituted for the purpose. In the instant case, nothing has been done and the learned Magistrate has detained the petitioner in custody without any authority of law. The learned Magistrate has no power to grant bail to an accused of an offence punishable under the said Act. It is submitted that in good number of cases, the learned Magistrates are remanding the accused persons in custody beyond the period of 15 days as provided by section 36A of the said Act.

2. Under these circumstances, we hold that the accused person has been kept in detention without due sanction of law.

3. We direct that the accused petitioner be released forthwith.

4. The Registrar A. S. is directed to prepare adequate number of copies of this

order and circulate them to all the Magistrates and the learned Sessions Judges throughout the State.

Learned Registrar A. S. is also directed to serve a copy of this order on the learned Additional Public Prosecutor, High Court, Calcutta.

A.K. Bhattcharjee, J.

I agree.