

21.12.2020  
Item no. 88  
Court No.28  
AB

**C.R.M. No.8145 of 2020**

**(Via Video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure in connection with Special Case No.38 of 2019 (NCB Crime No.23/NCB/KOL/2019 Dated 13.12.2019 under Sections 8(c) read with Sections 20(g), 27A, 28 & 29 of the NDPS Act

And

In the matter of:-

**Abdul Malique & ors.**

**... Petitioners**

Mr. Sandipan Ganguly, Sr. Advocate,  
Mr. D. Dutta

.. for the petitioners

Mr. Subrata Roy,  
Ms. Sukanya Bhattacharya,  
Mr. M. F. A. Begg

..for the State

Mr. Y. J. Dastoor, Ld. ASG,  
Mr. Phiroze Edulji

..for the UOI

It is submitted on behalf of the petitioners that they are in custody for one year & 10 days. It is further submitted that there is no legally admissible evidence connecting the petitioners with the alleged transportation of narcotic substance.

Learned Additional Solicitor General opposes the prayer for bail and submits that the petitioners are the conspirators to the

crime. They were found in a hotel near the place of seizure. Call detail records (CDRs) show active communication between the petitioners and the other accused persons. He also relies on statements of the co-accuseds and of the petitioners recorded under Section 67 of NDPS Act to establish the charge of conspiracy relating to illegal transportation of narcotic substance.

In reply, learned Senior Counsel submits that the statements are inadmissible in law in the light of the law declared in ***Tofan Singh Vs State of Tamil Nadu*** reported in ***(2020 SCC Online SC 882)***.

In said report, Apex Court held that such statements are inadmissible in law. Hence, we are not inclined to look into the statements made by the petitioners and co-accused before the investigating agency. If such statements are excluded, remaining materials on record against the petitioners are extremely speculative and flimsy. Mere presence near the place of occurrence or telephonic conversation with co-accused persons, even believed to be true, may give rise to mere suspicion but would not justify a prima facie case of conspiracy so as to deny the petitioners' liberty, at this stage, in spite of the statutory restrictions under Section 37 of the NDPS Act.

Hence, we are inclined to hold that in the aforesaid factual matrix the petitioners have been able to rebut the aforesaid restrictions and in view of the period of detention suffered by them, as aforesaid, we are inclined to grant bail to the petitioners.

Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs.1,00,000/- (Rupees One Lac Only) each with five registered sureties of Rs.20,000/-each, to the satisfaction of the learned Judge, Special Court under the NDPS Act at Malda, subject to the condition that the petitioner nos.1 and 2 shall reside within the district of Malda and provide the address to the Investigating Officer and the Court below and meet the Investigating Officer once in a month until further orders. Petitioner no.3, being a resident of district of Murshidabad in the State of West Bengal, shall reside in the said district until further orders and shall not leave the said district without the leave of the Trial Court except for the purpose of attending court proceedings. They shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioners fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

**(Suvra Ghosh, J.)**

**(Joymalya Bagchi, J.)**

