

30.07.2021

Court No.28
Item No.09
(Rejected)

Akd
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As

CRM 469 of 2021
(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with N.D.P.S. Case No.29 of 2018 arising out of NCB Crime No.36/NCB/KOL/2018 dated 25.7.2018 under Sections 22(c)/29 of the N. D. P. S. Act.

And

In the matter of : **Md. Kalu @ Ataur Rahaman.**
...Petitioner

Mr. Debasish Roy, Sr. Adv.,
Mr. Soumya Nag.

...For the Petitioner

Mr. Y. J. Dastoor, Ld. A.S.G.,
Mr. Phiroze Edulji.

...For the State.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with N.D.P.S. Case No.29 of 2018 arising out of NCB Crime No.36/NCB/KOL/2018 dated 25.7.2018 under Sections 22(c)/29 of the N. D. P. S. Act.

It is submitted by the learned Advocate for the petitioner that the petitioner being an illiterate cannot be shown to have given his consent in writing and that there is no necessity for any Magistrate or Gazetted Officer during his personal search. It is further submitted that it does not transpire from the record that the sample was drawn in presence of the Magistrate and, therefore, the entire exercise is contrary to the provision of law.

The Additional Solicitor General opposes the prayer for bail. It is submitted that all the paraphernalia required under the law were observed and in fact, the chemical examination report would reveal the existence of contraband article. It is further submitted that the contraband above the commercial quantity was recovered from the possession of the petitioner and, therefore, he is not entitled to bail.

After hearing the respective submissions and on perusal of the materials on record and the fact that the chemical examination report which has already been collected would reveal the existence of the contraband, we do not think that the petitioner has been able to make out a case for taking exception of the provision contained under Section 37 of the N. D. P. S. Act.

However, the plea that there is inconsistency of the procedure provided in the statute has been followed or not can be taken at the time of trial and we hope and trust that the learned Special Judge, N. D. P. S. Court would decide the said issues.

We further request the learned Special Judge, N. D. P. S. Court to expedite the matter and if the charges has not been framed, endeavour shall be shown to frame the same so that the case can be brought to its logical end at an earliest.

Accordingly, the prayer for bail of the petitioner is rejected.

The application for bail, being CRM 469 of 2021, is thus **dismissed.**

(Harish Tandon, J)

(Bibek Chaudhuri, J.)