

08.03.2021
Court No.28
Item No. 09
Krishnendu
Bail Rejected

**CRM 556 of 2021
(Via video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : **Jawad Alam @ Kafan**

.....Petitioner

Mr. Sabyasachi Chatterjee,
Mr. Pintu Karar,
Mr. Akashdeep Mukherjee,
Mr. Sushovon Dey

....For the Petitioner

Mr. Sanjoy Bardhan,
Mr. Palash Chandra Majhi

.....For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Golabari Police Station Case No.409 of 2019 dated 22.10.2019 under sections 20(b)(ii)/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

The learned advocate for the petitioner submits that similarly placed accused person has been granted bail by the learned judge, Special Court under the NDPS Act, Howrah. The learned advocate draws the attention of this Court to the said order and submits that there has been non compliance of the directions of the Hon'ble Apex Court in the Case of **D. K. Basu Vs. State of West Bengal**, reported in **AIR 1997 SC 610** as also in respect of the witnesses of the seizure, who were allegedly not residents / respectable citizens of the locality. As another accused, who was alleged to be in conspiracy and/or in

joint possession from whom recovery has been effected, has been granted bail, the petitioner prays for bail on situational parity.

Mr. Bardhan, learned advocate for the State opposes the prayer for bail and submits that 28.8 Kgs. of contraband (Ganja) were seized from the joint possession of the petitioner and another accused, who has been granted bail. According to him, the provisions of Section 37 of the NDPS Act are attracted and as such, the petitioner is not entitled to bail. He also submits that the reasons assigned for granting bail to the accused person by the learned Judge was not in accordance with the provisions of law and as such, the same should not be made a precedent for consideration of bail.

We have taken into account the materials, more particularly, the thrust of the argument of the learned advocate appearing for the petitioner in respect of the order of bail dated 04.09.2020 wherein a co-accused, namely, Abdul Quader @ Prem, was granted bail.

Having regard to the fact that for non compliance of D. K. Basu Vs. State of West Bengal (supra), it was the duty of the learned court below to take steps against the erring Officer and the consequence could never have been a result of granting bail. We do not approve the said order or relief being granted to the co-accused. So far as the witnesses are concerned, it was incumbent upon the learned trial court to wait till the witnesses were examined on dock. Having regard to the reasons for granting bail by the learned Special Court, we do not agree with

the same and as such, the prayer for bail of the present petitioner is rejected.

With the aforesaid observations, the application for bail, being CRM 556 of 2021, is disposed of.

(Tirthankar Ghosh, J)

(Tapabrata Chakraborty, J)