

18.11.2021

**CRM 5266 of 2021**

Court No.28  
Item No.47  
(REJECTED)

Ab

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.08.2021 in connection with Karandighi Police Station case No. 262 of 2019 dated 22.08.2019 under Sections 20/21/22 of the Narcotic Drugs and Psychotropic Substances Act (SPL. NDPS Case No. 14 of 2019);

And

In the matter of : **Iyad Ali @ Yad Ali.**

**...Petitioner.**

**Mr. Ayan Basu,  
Mr. Sandip Kumar Mondal,  
Mr. Gourango Kumar Das,  
Mr. Sumit Routh.**

**...For the Petitioner.**

**Mr. Sudip Ghosh,  
Mr. Bitasok Banerjee.**

**... For the State.**

The Advocate-on-record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking, the application is taken up for hearing.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with Karandighi Police Station case No. 262 of 2019 dated 22.08.2019 under Sections 20/21/22 of the Narcotic Drugs and Psychotropic Substances Act.

Learned Advocate for the petitioner submits that there was no recovery of contraband from the exclusive possession of the petitioner. In fact, the other co-accused, who were present at the time of seizure of the contraband of the commercial quantity, have been enlarged on bail.

Learned Advocate for the State opposes the prayer for bail. It is submitted that 25 kilograms of Ganja i.e. the commercial quantity were recovered from the house of the petitioner. The other co-accused have been found during investigation that they were not having knowledge of such contraband having kept in the house of the petitioner and for such reason, they were enlarged on bail. It is

further submitted that the petitioner stands on different footing that of the other co-accused.

After hearing the respective Counsels and on perusal of the materials on record it transpires that the contraband above the commercial quantity was recovered from the house of the petitioner. The expression 'possession' is used in a varied manner depending upon the context and the facts relating to the commission of offence. It cannot be squeezed within the straightjacket formula as it depends upon various factors.

The contraband above the commercial quantity was recovered from the house of the petitioner and there was no satisfactory answer relating to the presence of such contraband in his house. It raises a statutory presumption against the petitioner to have conscious possession of the contraband and, therefore, the rigor of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is automatically attracted.

In view of the embargo created under the aforesaid provision, we do not find it is a fit case where the petitioner should be enlarged on bail.

The application for bail being CRM 5266 of 2021 is, thus, ***rejected.***

**(Harish Tandon, J)**

**(Rabindranath Samanta,J.)**