

08.06.2022
cm/ct 28
sl no. 6

C.R.M.(NDPS) No. 509 of 2022

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with **NCB Crime No. 79/2021/NCB/KOL/2021** dated **25.11.2021** under Section **8 (c)** read with **22 (C)/28/29** of the NDPS Act, 1985.

And

Allowed

In Re : Abhijit Deb

..... petitioner

Mr. Debasish Roy
Mr. Abhishek Dey

..... for the petitioner

Mr. Dipankar Dandhapat
Mr. Sagar Saha

..... for the NCB.

Petitioner is in custody from 20th November, 2021. It is contended that he is a wholesaler dealer in drugs and has no connection with the alleged narcotic substance seized from co accuseds. It is further submitted petitioner was unwell for a period of time and was hospitalized and during the said period his officers had conducted the business in an irregular manner.

Learned lawyer for the NCB opposes the prayer for bail. He submits that petitioner had sold drugs containing codeine phosphate to co-accuseds and received payments in cash which is in violation of Government directions.

Learned lawyer for the NCB also relies on statements of the petitioner and co accuseds recorded under Section 67 of the NDPS Act and seizure list which show consignments were from the wholesale business of the petitioner.

We have considered the materials on record. Statements of the petitioner and other co accuseds are inadmissible in law in the

light of ***Tofan Singh Vs. State of Tamil Nadu***¹. Petitioner is carrying on wholesale business and it appears that he had transferred stocks to various dealers. It is true some transactions were made in cash which is not mandated through Government orders. However, there is no material to show whether the seized consignments were transferred to co-accuseds at the end of the wholesale business of the petitioner or at the end of the retailers to whom the petitioner had effected the transfers. Moreover, though receipt of cash money instead of electronic transfer would constitute breach of Government directions under the Drugs and Cosmetics Act, the same by itself may not constitute offence under the NDPS Act.

In view of the aforesaid facts, we are of the opinion he has been able to rebut statutory restrictions under Section 37 of the NDPS Act and keeping in mind the period of detention suffered by him and as investigation is complete, we are inclined to enlarge him on bail.

Accordingly, the petitioner be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount, one of whom must be local, to the satisfaction of the learned Judge, Special Court, under NDPS Act, Krishnanagar, Nadia on condition that petitioner shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

¹ (2021) 4 SCC 1

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application being CRM(NDPS) No.509 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)