

07.06.2022
cm/ct 28
sl no. 30

C.R.M.(DB) No. 1407 of 2022

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with **NCB Crime No. 12/NCB/KOL/2021** dated **07.04.2021** under Section **8 (c)** read with **20 (b) (ii) (C)/28/29** of the NDPS Act, 1985.

And

Allowed

In Re : Asit Karmakar

..... petitioner

Mr. Subhabrata Chowdhury
Mr. Biswajit Goswami
Ms. Tripti Pandey
Mr. Rohit Prasad

..... for the petitioner

Mr. Jasojeet Mukherjee

..... for the NCB.

Petitioner is in custody for more than 63 days. It is contended no narcotic substance was recovered from his possession. Purported statement of the petitioner and other accused persons recorded under Section 67 of the NDPS Act is inadmissible in law in the light of ***Tofan Singh Vs. State of Tamil Nadu***¹. Hence, there is no legally admissible material connecting the petitioner with the alleged crime.

Learned lawyer for the NCB submits that petitioner was present along with co accuseds Sushanta Dey @ Ravi and Manik Chandra Das @ Manik Chandra Das at the spot when recovery of narcotic substance above commercial quantity i.e. 215 KG ganja was made. He confessed his guilt before NCB officers. CDRs of the mobile phones of the petitioner and co accused Sushanta Dey @

¹ (2021) 4 SCC 1

Ravi show continuous telephonic conversations by and between themselves on the day of the incident.

In reply, petitioner submits Sushanta Dey @ Ravi was known to the petitioner and accordingly telephonic conversions had been made for other purposes.

We have considered the materials on record. Admittedly, no narcotic substance had been seized from the possession of the petitioner. Prosecution has sought to rely of statements of the petitioner and co-accuseds recorded under Section 67 of the NDPS Act to establish his presence at the spot where recovery was made. In view of the law declared in ***Tofan Singh (supra)*** such statements are inadmissible in evidence. If the said statements recorded under Section 67 of the NDPS Act are not taken into consideration, what remains are same telephonic calls between petitioner and co accused Sushanta Dey @ Ravi. It is contended on behalf of the petitioner that said co accused is acquainted to him and telephonic conversations were for other purposes.

In view of the slender and ambiguous material available against the petitioner, we are of the opinion petitioner has been able to rebut the statutory restrictions under Section 37 of the NDPS Act and bearing 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.25,000/- with two sureties of like amount, one of whom must be local, to the satisfaction of the learned CJM,

Barasat on condition that Petitioner shall remain within the district of North 24 Parganas and 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.

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(DB) No.1407 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)