

16.06.2022.
03.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 547 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with N Case No.39 of 2020 arising out of NCB Crime No.14/NCB/KOL/2020 corresponding to NCB F. No.06/NCB/KOL/2020 under Sections 20(b)(ii)(c)/29 of the N.D.P.S. Act.

In the matter of : Sujay Sarkar & Anr.

.... Petitioners.

Mr. Sandipan Ganguly,
Mr. Sunny Nandy,
Mr. Mukesh Kr. Pandey,
Mr. Karan Dudhewala.

...for the Petitioners.

Mr. Moyukh Mukherjee.

...for the NCB.

Heard the learned Counsels appearing on behalf of the parties.

Petitioner No.1 is in custody for about 191 days and petitioner No.2 is in custody for about 185 days respectively. It is contended no narcotic substance was recovered from the petitioners. Respondent NCB issued notice under Section 67 of N. D. P. S. Act. Subsequently, they were arrested.

Learned Advocate for the NCB opposes the prayer for bail and submits petitioners entered into conspiracy with co-accuseds who are conjointly transporting narcotic substance above commercial quantity. They fled from the spot. They admitted their guilt in their statements under Section 67 of the N. D. P. S. Act. CDRs show active communication between

petitioner and the co-accuseds from whom narcotic substance was recovered.

We have considered the materials on record. No narcotic substance was recovered from the possession of the petitioners. Statements recorded under Section 67 of N.D.P.S. Act are inadmissible in view of ***Tofan Singh Vs. State of Tamil Nadu***¹.

Under such circumstances only material on which the prosecution seeks to rely to establish its charge of conspiracy are telephonic communications by and between the parties. No other material including money trail pertaining to the transaction in question has been placed on record.

In view of the aforesaid slender material on record, we are of the opinion petitioners have been able to rebut statutory restrictions under Section 37 of the N. D. P. S. Act.

Under such circumstances, in view of the period of detention suffered by the petitioners and as investigation is complete, we are inclined to grant bail to them.

Accordingly, the petitioners shall be released on bail upon furnishing a bond of Rs.20,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under N.D.P.S. Act, Barrackpore, North 24-Paraganas subject to condition that they shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

¹ (2021)4 SCC 1

In the event the petitioners fail to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

This application for bail is, thus, disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)