

13.06.2022
cm/ct 28
sl no. 20

C.R.M. (NDPS) 597 of 2022

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Raghunathganj P.S. Case No. 669/2021 dated 21.10.2021 under Sections 21 (c)/29 of the NDPS Act.
And

Allowed

In Re : Md. Isha @ Isha Sk & Anr.

..... petitioners

Mr. Sandipan Ganguly, Ld. Sr. Adv.

Mr. Jisan Iqubal Hossain

..... for the petitioners

Mr. Ranadeb Sengupta

..... for the State

Learned Senior advocate appearing for the petitioners submit that alleged narcotic substance sized does not fall within commercial quantity in the light of Section 2 (viia) of NDPS Act.

Learned advocate appearing for the State submits there was recovery of 250 grm. of heroin from joint possession of the petitioners.

Section 2(viia) A of the NDPS Act reads as follows:

“ Section 2(viia). “Commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;”

In the table appended to the Act in respect of ‘**heroin**’ 250 gms. is noted under the heading ‘**commercial quantity**’.

Conjoint reading of the aforesaid provisions would show recovery of a quantity above 250 grm. of heroin would attract Section 21 (c) of the N.D.P.S. Act. In view of the aforesaid facts, we are of the opinion quantity of narcotic substance allegedly

recovered from the possession of the petitioners does not attract Section 21 (c) of the N.D.P.S. Act and restrictions under Section 37 of the N.D.P.S. Act relating to grant of bail are not applicable in the facts of the case. Under such circumstances as the petitioner is in custody for 236 days, investigation is complete and they do not have any criminal antecedents, we are inclined to grant bail to them.

Accordingly, the petitioners be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act, Berhampore, Murshidabad on condition that the petitioners 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 they fail 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. 597 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)