

23.06.2022.
12.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 675 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No.220 of 2020 arising out of NCB Crime No.21/2020 under Sections 25A/29/35/54 of the N.D.P.S. Act and Section 9(A) of the N. D. P. S. Act.

In the matter of : Md. Hamid Alam & Anr.

.... Petitioners.

Mr. Manab Kr. Gupta,
Mr. Tanmoy Roy,
Ms. Moumita Gupta.

...for the Petitioners.

Mr. Uttam Basak.

...for the NCB.

Heard the learned Counsels appearing on behalf of the parties.

Petitioner is in custody for more than 20 months. It is contended pseudoephedrine, a controlled substance, was recovered from a courier firm. Seized substance is neither a narcotic nor a psychotropic substance. Hence, penal provisions of NDPS Act would be attracted for possession of 'controlled substance' under the Act. He further submits no recovery was made from his clients and they have been implicated on the basis of their statements recorded under Section 67 of the NDPS Act which are inadmissible in law.

Learned Advocate for the NCB opposes the prayer for bail. He submits pseudoephedrine is a 'controlled substance' under the Act and is used to manufacture narcotics. Petitioner and co-accuseds have been charged with conspiracy and illicit

possession of 'controlled substance' justify their detention. In support of his contention he relies on ***Union of India Vs. Prateek Shukla***¹.

We have considered the materials on record. Admittedly, no narcotic or psychotropic substance was recovered from the possession of any of the accused persons. However, 3.950 kg pseudoephedrine was recovered in transit and the petitioners are said to be the consignors of the consignment. It is contended illicit possession of 'controlled substance' which is used for manufacture narcotics gives rise to a reasonable inference of conspiracy between the petitioner and co-accuseds to manufacture narcotics.

Having considered the materials on record, we are of the opinion mere possession of 'controlled substance' without anything more may not always give rise to an inference of conspiracy. Possession of 'controlled substance' is not a crime. Even if such possession is considered as preparatory steps to manufacture narcotics, it may be apposite to note preparation for commission of offence is not punishable under the NDPS Act. ***Union of India Vs. Prateek Shukla*** (*supra*) is inapplicable in the facts of the case. In the cited case apart from recovery of acetic anhydride (controlled substance), 1.885 kgs of amphetamine, a narcotic substance above commercial quantity, was recovered. Furthermore statements of the

¹ (2021) 5 SCC 430

petitioners under Section 67 of NDPS Act are also inadmissible in view of ***Tofan Singh Vs. State of Tamil Nadu***².

In view of the aforesaid materials 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 and they may be granted bail.

Accordingly, the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- 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, Barasat, 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.

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.)

² (2021) 4 SCC 1