

01.08.2022
cm/ct 28
sl no. 9

C.R.M. (NDPS) No. 866 of 2022

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with **Domkal P.S Case No. 118 of 2022** dated **03.03.2022** under Sections **21(c)/29** of the Narcotic Drugs and psychotropic Substances Act, 1985.

And

Allowed

In Re : Jalaluddin Mondal

..... petitioner

Mr. Arnab Chatterjee
Mr. Amanul Islam
Mr. Sourav Mukherjee
Ms. Dhanasree Biswas

..... for the petitioner

Mr. T.D. Nandy
Mr. Antarikhya Basu

..... for the State

Petitioner is in custody for 150 days. It is contended he was arrested in connection with Hogalberia P.S. Case No. 306 of 2021 dated 31.12.2021 under Sections 399/402 of the Indian Penal Code. Subsequently, he was shown arrested in the present case and remained to custody. Narcotic substance alleged on the showing of the petitioner is from a bamboo bush which is accessible to all.

Learned lawyer for the State opposes the prayer for bail. He submits on the statement of co-accused Sk. Mojibar Mondal complicity of the petitioner has transpired. On 17.03.2022 prayer was made to interrogate the petitioner in connection with the present case. Subsequently, he was arrested and produced before magistrate on 22.03.2022. On his leading statement 100 bottles of phensedyl was recovered from a bamboo bush near his house.

We have considered the materials on record. Petitioner was in custody in connection with another case since 04.03.2022. Subsequently, he has been shown arrested in the present case. Though it is alleged recovery was made on the leading statement of the

petitioner recorded on 30.03.2022, we note the said recovery is from an open place which is accessible to all and admittedly petitioner had not been a free agent since 04.03.2022. Possibility of planting of narcotic substance at a place accessible to others cannot be ruled out. Moreover, no statement of witnesses to the seizure have been recorded in the course of investigation till date.

In view of the aforesaid circumstances, we are of the opinion petitioner has been able to rebut statutory restrictions under Section 37 of the NDPS Act and bearing in mind the period of detention suffered by him i.e. 150 days, he may be enlarged on bail subject to strict conditions.

Accordingly, the petitioner 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 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 and on condition petitioner shall meet the officer-in-charge of Domkal Police Station once in a week or until further orders.

In the event petitioner 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. 866 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)