

31.03.2022
Serial no. 76
CHC
Ct. No. 29
Rejected

CRM 8564 of 2021

In re : An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 10th December, 2021 in connection with Durgapur Police Station Case No.386/2018 dated 13/08/2018 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act read with section 120B of the Indian Penal Code and sections 25(1B)(a)/35 of the Arms Act.

-And-

In the matter of : Sailen Garai

...Petitioner

Mr. Suman De, Advocate

... ... For the Petitioner

Mr. Sanjay Bardhan, Advocate

Mr. Nirupam Dhali, Advocate

... ...For the State

Petitioner seeks bail.

Learned advocate appearing for the petitioner submits that no recovery was made from the possession of the petitioner. The petitioner sought to be proceeded against on the basis of the statement of the co-accused made while in custody. He submits that earlier prayer for bail was rejected prior to the pronouncement of the law by the Supreme Court in the case of **Toofan Singh** reported in **(2021) 4 SCC 1**.

Learned advocate appearing for the State submits that petitioner is not proceeded against on the basis of statement of the co-accused made while in custody. The petitioner is the co-conspirator. There are independent witnesses implicating the petitioner in the offence is accused of. He refers to one of such statement recorded under Section 161 of the Code of Criminal Procedure. There are materials in the case diary that

persons who are not accused in the case, implicated the petitioner in the offences that he is accused of.

In the **Toofan Singh's case** Supreme Court discounted his statement of the co-accused made while in custody. In the present case, the police are not proceeded against the petitioner on the basis of the statement of the co-accused made while in custody, rather there are materials which are independent of the co-accused implicated the petitioner.

In such circumstances, we are of the view that the petitioner is unable to overcome the restrictions under Section 37 of the N.D.P.S. Act, 1985.

Consequently, we are unable to grant bail to the petitioner.

CRM 8564 of 2021 is rejected.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)