

06.01.2022
Sl. No.36
akd
[ALLOWED]

C. R. M. 8718 of 2021

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 16.12.2021 in connection with New Alipore Police Station Case No. 65 of 2021 dated 19.02.2021 under Sections 21(b)/29/27A of the NDPS Act and charge-sheeted under Sections 21(b)/27A/29/30/58(2) of the NDPS Act. (NDPS Case No.17 of 2021)

And

In Re: ***Daim Akhtar***

... .. Petitioner

Mr. Banibrata Datta
Mr. Faisur Rahman Molla

... .. for the petitioner

Mr. Saswata Gopal Mukherjee .. Ld. Public Prosecutor
Mr. Sanjay Bardhan
Mr. Rudradipta Nandy
Mr. Ranadeb Sengupta

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for about 210 days. It is further submitted that no narcotic substance was recovered from his possession. It is also submitted that he has been falsely implicated in the instant case. Co-accused persons namely, Rakesh Singh @ Rakesh Kumar Singh and Jeetendra Kumar Singh have been enlarged on bail.

Learned Public Prosecutor opposes the prayer for bail and submits that the bail order granted to Jeetendra Kumar Singh has been assailed before the Apex Court. He further draws our attention to the role played by the petitioner in dealing with narcotic substance.

We have considered the materials on record. Allegation against the petitioner as appearing from the case diary placed before us is summarised as follows :-

“..... the present accused petitioner Diam Akhtar accompanied accused Sl. No. 10, Farhan Ahmed on different dates to hand over Cocaine to accused Sl. No. 8, Amrita Singh @ Sweety in lieu of money (Revealed from 164 Cr.P.C. statement of Md. Nasir Khan, Page No.

782 to 786 of Case Diary Vol. No. VI and 161 Cr.P.C. statement of Md. Nasir Khan Page No. 200 and 201 of Case Diary Vol. No. II) and accused Amrita Singh @ Sweety handed over the said cocaine to accused Rakesh Kumar Singh on those days. At the time of arrest, the mobile phone of the accused Diam Akhtar was seized (Page No. 560 of Case Diary Vol. No. 5). The mobile phone was sent to CFSL Bhopal for examination and opinion (Exhibit marked 'AM6' remarked as M-8 of page No.2, of the opinion). The opinion of the Forensic Expert clearly reveals that the mobile number of other accused namely, Farhan Ahmedis saved in the mobile phone of the present accused petitioner Diam Akhtar (Point No. 47 and 48, page No.4 of the opinion).

To assess the aforesaid accusation, we have examined the statements of Nasir Khan. We note that there is hardly any role attributed to the petitioner in dealing with narcotic substance. Presence of the mobile number of co-accused in the phone list of the petitioner cannot give rise to an inference of conspiracy. In view of the aforesaid facts and as co-accused persons namely, Rakesh Singh @ Rakesh Kumar Singh and Jeetendra Kumar Singh have been enlarged on bail, we are of the opinion that the petitioner has been able to rebut the statutory restrictions under Section 37 of the NDPS Act and he may be granted bail.

Therefore, the accused/petitioner, namely ***Daim Akhtar***, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the NDPS Act, 1985, Alipore, South 24-Parganas subject to condition that the said petitioner 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 or commit similar offences in future.

In the event he 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 for bail, thus, stands **allowed**.

(Bibhas Ranjan De, J.)

(Joymalya Bagchi, J.)