

07.09.2022
Sl. No.5
akd
[ALLOWED]

C. R. M. (NDPS) 1013 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 02.09.2022 in connection with NDPS Seizure Case No.03/NDPS/CL/BCPU/CCP/WB/2020-2021 dated 02.03.2021 under Sections 21(c)/29 of the NDPS Act. (NDPS Special Case No.41 of 2021)

And

In Re: **Dwijen Saha**

... .. Petitioner

Mr. Arnab Chatterjee
Mr. Anisur Rahaman

... .. for the petitioner

Mr. K. K. Maiti
Mr. Tapan Bhanja

... .. for the opposite party

It is submitted on behalf of the petitioner that he is in custody for about eleven months. It is further submitted no narcotic substance was recovered from his possession.

Learned advocate appearing for the Customs opposes the prayer for bail and submits petitioner made voluntary statement under Section 67 of the NDPS Act which discloses his complicity in the crime and identity of other accuseds.

We have considered the materials on record. We find that no narcotic substance was recovered from the possession of the petitioner. His complicity has transpired from his statement before Customs officer recorded under Section 67 of the NDPS Act which is inadmissible in law in view of **Tofan Singh vs. State of Tamil Nadu**¹. No further recovery of narcotic was made pursuant to his statement so as to make it admissible under Section 27 of the Evidence Act. Under such circumstances, we are of the opinion that the petitioner has been able to rebut the statutory restrictions under Section 37 of the NDPS Act. In

¹ (2021) 4 SCC 1

view of the aforesaid facts and the period of detention suffered by the petitioner, we are of the opinion further detention of the accused/petitioner is not necessary.

Therefore, the accused/petitioner, namely **Dwijen Saha**, 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, Berhampore, Murshidabad 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**.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)