

16.11.2022
Sl. No.6
akd
[PARTLY
ALLOWED]

C. R. M. (NDPS) 1338 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 09.11.2022 in connection with Kaliachak Police Station Case No. 457 of 2022 dated 06.05.2022 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.66 of 2022)

And

In Re: **Rasel Sk. @ Rasel Sekh & Anr.**

... .. Petitioners

Mr. Mazhar Hossain Chowdhury
Ms. Mobashshara Alam

... .. for the petitioners

Mr. Madhusudan Sur .. Id. Addl. Public Prosecutor
Mr. Dipankar Paramanick

... .. for the State

It is submitted on behalf of the petitioners that they are in custody for about 67 days. It is further submitted no narcotic substance was recovered from their possession.

Learned Additional Public Prosecutor opposes the prayer for bail and submits petitioner no.1 and one co-accused from whom narcotic substance was recovered were travelling on a motorcycle. The said motorcycle stands in the name of petitioner no.2.

We have considered the materials on record. Presence of petitioner no.1 at the spot transpires from the statement of co-accused before a police officer which is inadmissible in evidence. In view of the aforesaid fact, we are of the opinion petitioner no.1 has been able to rebut the statutory restrictions under Section 37 of the NDPS Act and may be enlarged on bail.

Therefore, the accused/petitioner no.1, namely **Rasel Sk. @ Rasel Sekh**, 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-cum-Additional Sessions Judge, 3rd Court (in-charge of 4th Court), Malda 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 any justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

However, involvement of the petitioner no.2 in the transaction is evident from the recovery of the motorcycle standing in his name. Hence, we are not inclined to grant bail to petitioner no.2 namely, **(2) *Khairul Sk.***

The application for bail is thus disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)