

14.03.2023.
05.
Ct.No.28
as
(Rejected)

C.R.M. (NDPS) 46 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No. 122 of 2022 arising out of Kaliachak P.S. Case No.875 of 2022 dated 12.08.2022 under Sections 21(c)/29/27A of the NDPS Act.

In the matter of : Devendra Ahuja @ Chintu.

... Petitioner.

Mr. Aman Lekhi, Id. Sr. Adv.,
Mr. Milon Mukherjee, Id. Sr. Adv.,
Mr. Bhanwar Jadon,
Mr. Ritwiz Rishabh,
Mr. Dipanjan Dutt,
Ms. Shilpa Ahuja,
Mr. Surojit Saha.

...for the Petitioner.

Mr. Sanjoy Bardhan,
Ms. Baishakhi Chatterjee.

...for the State.

Mr. Aman Lekhi with Mr. Milon Mukherjee, learned Senior Advocates for the petitioner submit he is a victim of business rivalry. He is a dealer in medicine. There is no allegation of violation of conditions of licence under Drug and Cosmetics Act. No narcotics was recovered from his possession. Merely on suspicion he was arrested on 25th November, 2022. Till date, no legally admissible evidence has been collected against the petitioner. During the pendency of the bail application, he has been falsely implicated in another case being Hoglabari P. S. Case No.39 of 2023 dated 23.2.2023. Hence, he prays for bail.

On the other hand, learned Advocate for the State submits petitioner is a king pin in an organised racket of interstate trafficking/smuggling of narcotics. He is the owner of one '*M/s. Jai Ram Ji Ki*' Medical Agency against whom allegations were received by the Drug Inspector concerned. When Drug Inspector went to verify the allegations, he was criminally intimidated and threatened. A separate criminal case has been registered against the petitioner over such issue. Statements of witnesses recorded under Section 164 of the Code of Criminal Procedure including that of the Drug Inspector (in the other case) disclose his complicity in dealing in narcotics. The mobile phone of the petitioner has been seized and sent for forensic analysis. Investigation with regard to the conspiracy is in progress. Petitioner's complicity has also transpired in other cases. Hence, his release on bail would adversely affect the progress of investigation.

We have given anxious consideration of the rival submissions at the Bar. While Senior Advocates would strenuously argue that the restrictions under Section 37 of the NDPS Act do not eclipse the fundamental right to liberty under Article 21 of the Constitution of India, it would be contended on behalf of the State that the powers of investigation into a crime involving a deep rooted conspiracy in trafficking and/or smuggling narcotics is an essential sovereign duty and the 'procedure established by

law' would yield to the overriding public interest of custodial detention.

Exercise of discretion in bail matters is an attempt to strike a fine balance between the aforesaid two competing interests. Moreover, while dealing with bail prayers in cases involving commercial quantity of narcotics the Court must bear in mind the restrictions under section 37 of the NDPS Act. One of the essential pre-requisites under the aforesaid provision is the satisfaction of the Court that there are reasons to believe that the accused is not guilty of the offence. The requisite satisfaction of the Court must be something higher than a mere prima facie view of innocence. What are the materials which would weigh with the Court while considering a bail prayer would depend on the stage at which bail is sought for. Presently, we are concerned with a prayer for bail in the midst of investigation.

At this stage materials which may not be strictly admissible eg. statements of co-accuseds may give rise to reasonable suspicion leading to arrest and detention. In the present case, statement of co-accuseds gave rise to a reasonable suspicion of complicity of the petitioner in the conspiracy of trafficking narcotics. This prompted the investigating agency to arrest him. Further progress in investigation led to recording of statements of witnesses before Magistrate. These statements prima facie give an impression of involvement of the petitioner in trafficking of

narcotics. Conduct of the petitioner in threatening a drug inspector who was enquiring into his illegal activities at his place of business in UP further reinforces the prosecution case.

Judged from the aforesaid perspective and as investigation is crucially poised to unravel the conspiracy in trafficking narcotics, it may not be prudent to release the petitioner on bail.

Accordingly, the prayer for bail of the petitioner is rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)