

17.02.2023
4
sdas
Partly Allowed

CRM (NDPS) No. 180 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Bagadh Police Station Case No. 391 of 2022 dated 28.05.2022 under Section 21(c) of the Indian Penal Code.

And

In Re : Nasiruddin Biswas & Anr.

..... petitioners

Mr. Prodip Paul

..... for the petitioners

Mr. Sanjoy Bardhan

Mr. Palash Chandra Majhi

....for the State

It is submitted by the learned Counsel appearing for the petitioners that they are in custody for over nine months. It is also submitted that they were not in conscious possession of the narcotics. Second petitioner is a student and son of the first petitioner. His mother Sahimina Biswas has been granted interim bail by the Hon'ble Apex Court.

In view of the aforesaid submissions report was sought from the State. Report filed in Court be placed on record.

We have perused the report. In the course of raid a large volume of 1542 nos. of yaba tablets were recovered from a bag carried by the first petitioner.

Second petitioner is his son and a young student. The entire family comprising of the wife of the first petitioner i.e. Sahimina Biswas (on interim bail), the second petitioner and two other minor children were in the vehicle. In view of the aforesaid circumstances whether the second petitioner had knowledge with regard to the contents in the bag carried by his

father requires to be assessed during trial. He has made out a case to rebut the statutory restrictions under Section 37 of the NDPS Act. Accordingly, we are inclined to grant bail to him.

Accordingly, we direct that petitioner no. 2, Samim Biswas shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 6th court, Barasat, North 24 Parganas, subject to the condition that the petitioner no. 2 shall appear before the learned trial court on every date of hearing until further orders and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

In the event, petitioner no. 2 fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed in so far as petitioner no. 2 is concerned.

However, materials collected during investigation shows recovery of a large volume of yaba tablets from a bag carried by the first petitioner. In view of the aforesaid clinching materials on record culpability of the first petitioner appears to be on a graver footing than the other accuseds. Under such circumstances and in view of the statutory restrictions under Section 37 of the NDPS Act do not persuade to enlarge him on bail.

The application for bail is, accordingly, rejected in so far as petitioner no. 1 is concerned.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)