

16.02.2023

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rejected

C.R.M. (NDPS) No. 253 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Nazat Police Station Case No. 146 of 2022 dated 23.05.2022 under Sections 21(c) of the NDPS Act.

And

In Re : Sekh Siraj petitioner

Mr. Rajendra Banerjee
... for the petitioner

Mr. Rudradipta Nandy, learned APP
Mrs. Sonali Das
... for the State

Learned Counsel for the petitioner submits he is in custody since 23rd May, 2022. It is also submitted that there is irregularity in sampling. There is no independent witness to the recovery. He has been falsely implicated. He prays for bail.

Learned Counsel for the State opposes the prayer for bail and submits charge has been framed and date has been fixed for recording evidence.

We have considered the materials on record. Statements of official witnesses and seizure memorandum show recovery of 5.3 liters of codeine mixture from the possession of the petitioner. Non-joining of the independent witnesses, *per se*, does not render the seizure illegally. Its impact has to be assessed in the light of the other evidence on record. With

regard to other plea i.e. irregularity in seizure and that the envelop of the samples despatched and that examination as FSL are of different colour, we note that the samples were sealed and the particulars of the seal have been reflected in the FSL report prima facie shows custody cannot be said to have been breached. Hence, we are not inclined to grant bail to the petitioner particularly in view of quantity of narcotics seized which is above commercial quantity attracting statutory restrictions under Section 37 of the NDPS Act.

The application for bail is, thus, rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)