

10.04.2023.
08.
Ct.No.28
as
(Rejected)

C.R.M. (NDPS) 411 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Sankrail P.S. Case No.1444 of 2021 dated 02.12.2021 under Section 20(b)(ii)(c) of the NDPS Act.

In the matter of : Aloka Bihari Sahu.

... Petitioner.

Mr. Bibaswan Bhattacharya,
Ms. Bindia Paul.

...for the Petitioner.

Mr. Sanjoy Bardhan,
Ms. Baishakhi Chatterjee.

...for the State.

Petitioner submits that he is a contractual driver of the vehicle from where narcotics was recovered. He did not have conscious possession of the narcotics.

Learned Advocate for the State opposes the bail prayer. He submits bail prayer of the petitioner was rejected earlier on merits.

We have considered the materials on record. Recovery was made from a stationary vehicle. The vehicle was in the control and custody of the petitioner i.e. driver and his associates. No other person was inside the vehicle at the time of recovery. These circumstances give rise to constructive possession of the petitioner and co-accused over the consignment.

Under such circumstances and in view of statutory presumption under Sections 35/54 of the NDPS Act, onus shifts on the petitioner to rebut the requisite *mensrea*.

In the light of statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

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

(Partha Sarathi Sen, J.)

(Joymalya Bagchi, J.)