

24.04.2023
Sl. No.8
akd
[ALLOWED]

C. R. M. (NDPS) 596 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 22.03.2023 in connection with Special Case No.12 of 2022 arising out of NCB Crime No.04 of 2022 under Sections 8(c)/21(c)/22(c)/29 of the NDPS Act.

And

In Re: ***Atul Jaiswal***

... .. Petitioner

Md. Sabir Ahmed
Md. Kutubuddin

... .. for the petitioner

Mr. Anirban Mitra

... .. for the NCB

It is submitted on behalf of the petitioner that he is in custody for more than 400 days. It is further submitted no narcotics was recovered from his possession. Accordingly, he prays for bail.

Report is placed on record on behalf of the NCB.

Learned Advocate for the NCB opposes the prayer for bail and submits petitioner was employed by the principal accused viz. Om Narayan Gupta and assisted the said accused in illegal transaction in *Buprenorphine, codeine phosphate* etc. He was given monthly remuneration of Rs.5,000/-.

We have considered the materials on record. Apart from telephonic exchanges, there is no other legally admissible material to show nexus between the petitioner and Om Narayan Gupta. No money trail/money receipt showing payment of monthly remuneration to the petitioner has been collected to corroborate the statements recorded under Section 67 of the NDPS Act. Needless to mention statements under Section 67 of the NDPS Act, *per se*, are inadmissible in law. In view of the scanty evidence collected during investigation, we are of the

opinion petitioner has been able to make out a prima facie defence which is sufficient to rebut the statutory restrictions under Section 37 of the NDPS Act. Under such circumstances and in view of the period of detention suffered by the petitioner, we are of the opinion further detention of the accused/petitioner is not necessary and he may be enlarged on bail however, subject to strict conditions.

Therefore, the accused/petitioner, namely **Atul Jaiswal**, 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 District & Sessions Judge, 3rd Court, Dakshin Dinajpur at Balurghat 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 and on further condition that the petitioner, while on bail, shall not leave the jurisdiction of the district of Dakshin Dinajpur until further orders.

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.

The application for bail, thus, stands allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)