

19.04.2023
Sl. No.28
akd
[Rejected]

C. R. M. (NDPS) 809 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.04.2023 in connection with Raninagar Police Station Case No.64 dated 05.02.2021 under Section 21(c) of the NDPS Act. (NDPS Case No.26 of 2021)

And

In Re: ***Sikander Ali***

... .. Petitioner

Mr. Ramakant Gaur
Ms. Anupa Banerjee
Ms. Sneha Arya
Ms. Sanchita Barman Roy

... .. for the petitioner

Mr. Sanjay Bardhan
Ms. Debjani Dasgupta

... .. for the State

It is submitted on behalf of the petitioner that he was not aware with regard to illicit transportation of narcotics recovered from the vehicle. He is a mere driver and has been incorrectly described as owner in the earlier order rejecting bail. Accordingly, he cannot be foisted with the liability of illegal possession of narcotics. Neither the consignor nor the consignee has been investigated. He renews his prayer for bail.

Learned Advocate for the State opposes the prayer for bail and submits a large consignment i.e. 894 bottles of *phensedyl syrup* containing *codeine phosphate* was recovered from a vehicle. Petitioner was driving the vehicle. Neither consignment note nor explanation with regard to licit possession of the consignment has been offered by the petitioner. Accordingly, he was arrested and is being tried. Charge has been framed and date fixed for recording evidence.

We have considered the materials on record. At the outset we note petitioner is the driver and not the owner of the vehicle. He was driving the vehicle wherefrom a large volume of *phensedyl syrup* was recovered. We are conscious *phensedyl syrup* is also used for medicinal purposes but nothing is placed before us on behalf of the defence that the consignment was being transported for medicinal purposes. Possession of *phensedyl syrup* other than medicinal purposes would attract the offences under the NDPS Act¹. As the materials on record prima facie establish possession and control of the petitioner over the contraband, statutory presumptions under Sections 35/54 of the NDPS Act are attracted and onus shifts upon him to rebut the statutory presumptions during trial.

In this backdrop, we are of the opinion materials on record in the face of statutory restrictions under Section 37 of the NDPS Act do not justify grant of bail. Proceeding before the trial court has also progressed since the rejection of bail by this court and date has been fixed for recording evidence. Hence, we are not inclined to grant bail to the petitioner on the ground of delay too.

The application for bail is thus rejected.

We direct the trial court to proceed with the trial with utmost expedition and fix schedules for examination of witnesses at regular intervals so that trial can be concluded at an early date. Parties shall cooperate with the trial court in that regard.

Observations made in this order are for the purpose of disposal of the bail application and shall not have any bearing during trial which needless to mention shall be disposed of independently and in accordance with law.

¹ Mohd. Sahabuddin & Anr. vs. State of Assam. [(2012) 13 SCC 491]

Parties shall communicate a copy of this order to the trial court for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)