

15.05.2023.
09.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 832 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No.14 of 2022 arising out of Raniganj P. S. Case No.293 of 2022 dated 20.05.2022 under Sections 20(b)(ii)(C)/25/29 of the NDPS Act.

In the matter of : Harash Raut.

.... Petitioner.

Mr. Ayan Bhattacharjee,
Mr. Indrajit Adhikari,
Mr. Kunal Ganguly,
Mr. Tirupati Mukherjee,
Ms. Sanchari Chakraborty.

...for the Petitioner.

Mr. Sanjoy Bardhan,
Ms. Baishakhi Chatterjee.

...for the State.

Petitioner is in custody for 354 days. He submits there is no progress in the matter since rejection of bail in September, 2022. He renews his bail prayer.

Learned Advocate for the State opposes the bail prayer. He submits a number of persons moving in vehicle were apprehended. 24.96 kgs. of ganja was recovered from the vehicle. On their statement complicity of the petitioner and co-accused transpired. On the joint disclosure statement of petitioner and co-accused 7.7 kgs. of ganja were recovered. Bail prayer of the petitioner was rejected earlier on merits.

We have considered the materials on record. Bail prayer of co-accused Montu Prasad who is said to have been present in the vehicle has been allowed on the ground electronic

records produced by him show that he was apprehended from his residence and not the place of occurrence.

Be that as it may, no narcotics was recovered from the possession of the petitioner. It is alleged petitioner and co-accused made joint disclosure statements which resulted in recovery of narcotics from an abandoned ECL quarter. Nothing is placed on record to show petitioner had control and custody over the place where the recovery is made. Section 27 of Evidence Act is an exception to the bar of admissibility under Sections 25/26 of the Evidence Act before police officer or in custody of police. What is made admissible under Section 27 is the discovery of a fact i.e. knowledge of the petitioner with regard to narcotics stored in the ECL quarter. This does not *prima facie* establish either actual or constructive possession over the ECL quarter where narcotics was stored. Knowledge that the narcotics was stored in the abandoned quarter also cannot be said to be exclusive as it appears to have been shared with other co-accused too. Possibility of such illegal storage being common knowledge in the locality cannot be wholly ruled out. There is no progress in the matter since earlier rejection of bail by this Court.

Under such circumstances, we are inclined to revisit the extent of culpability of the petitioner in the backdrop of the materials on record to test whether a *prima facie* arguable defence is made out to rebut the statutory restrictions under Section 37 of the N. D. P. S. Act.

In view of the aforesaid reasons, we are inclined to reconsider our earlier conclusions and enlarge the petitioner on bail subject to strict conditions.

Accordingly, the petitioner viz., Harash Raut 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 Judge, Special Court under N.D.P.S. Act-cum- Additional Sessions Judge, 3rd Court, Asansol, Paschim Bardhaman subject to condition that he 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 and on further condition petitioner while on bail shall remain within the District of Paschim Bardhaman and provide the address to the Investigating Officer and court below and report to the Officer-in-charge of Raniganj, Police Station once in a week until further orders.

In the event the petitioner 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.

Presence of Investigating officer as well as Cyber Crime Police Officer are noted and dispensed with.

This application for bail is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)

