

04.05.2023
Sl. No.9
akd
[Rejected]

C. R. M. (NDPS) 929 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 18.04.2023 in connection with NDPS Case No.146 of 2022 arising out of NCB Crime No. 16/NCB/KOL/2022 under Sections 8(c)/21(c)/29 of the NDPS Act.

And

In Re: **Md. Salmaan**

... .. Petitioner

Mr. Anisur Rahaman

... .. for the petitioner

Mr. Kallol Mondal

Mr. Debapriya Samanta

... .. for the NCB

It is submitted on behalf of the petitioner that he is in custody for eleven months. It is further submitted he is a *khalasi* of the vehicle and was unaware of the contraband which was carried therein. Accordingly, he prays for bail.

Learned Advocate for the NCB opposes the prayer for bail.

We have considered the materials on record. Vehicle was used to transport a large volume of narcotics i.e. 200 cartons of 100 bottles each i.e. 20,000 bottles of *phensedyl syrup* containing *codeine phosphate*, which is above commercial quantity. Petitioner was in the vehicle and was involved in trafficking narcotics. In view of the fact that recovery was made from a vehicle which was in the control and custody of the petitioner, onus with regard to absence of requisite *mens rea* shifts upon him in view of the statutory presumptions under Sections 35/54 of the NDPS Act. Under such circumstances and in view of the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

The application for bail is thus rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)