

19.05.2023
Sl. No.13
akd
[ALLOWED]

C. R. M. (NDPS) 1028 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 16.05.2023 in connection with Gangnapur Police Station Case No.333 dated 10.07.2022 under Section 21(c) of the NDPS Act. (NDPS Case No.52 of 2022)

And

In Re: ***Paritosh Mridha @ Soumen***

... .. Petitioner

Mr. Subir Ganguly
Mr. Sumanta Ganguly

... .. for the petitioner

Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for over 300 days. It is further submitted he was in custody in another case and was falsely implicated in the present case. Nothing is placed on record to show that the recovery was made from a place which was not within the control and dominion of the petitioner. Accordingly, he prays for bail.

Learned Advocate for the State opposes the prayer for bail and submits on the leading statement of the petitioner narcotics above commercial quantity was recovered. He has criminal antecedents.

In response, it is submitted petitioner has been acquitted of the earlier case registered against him.

We have considered the materials on record. Petitioner was in custody in another case. Upon interrogation it is alleged he made a disclosure statement. On the basis of the said disclosure statement, 28 bottles of *phensedyl syrup* containing *codeine phosphate* were recovered from an abandoned place. Though recovery is said to be witnessed by independent persons, nothing is placed on record to show

that the place of recovery was within the control and dominion of the petitioner. Disclosure statement leading to recovery from an open place need not lead to inference of possession¹. Statement of an accused before a police officer to the extent it results in discovery of a fact is admissible. In the present case, leading statement leads to '*discovery of knowledge*' of the petitioner that narcotics was stored at a particular place but nothing is placed on record to show that the place was within the control and dominion of the petitioner.

In this backdrop, petitioner has made out a strong case that the ingredients of possession, actual or constructive, over the narcotics have not been established and the statutory restrictions under Section 37 of the NDPS Act are rebutted. Under such circumstances, we are inclined to grant bail to the petitioner.

Therefore, the accused/petitioner, namely **Paritosh Mridha @ Soumen**, 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, Nadia at Krishnanagar 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.

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.)

¹ *Salim Akhtar @ Mota vs. State of U.P.*, (2003) 5 SCC 499 [Paragraphs 10 & 12]
Aslam Parwez vs. Govt. of NCT of Delhi, (2003) 9 SCC 141

