

12.07.2023

Sl. No.12

akd

[PARTLY
ALLOWED]

C. R. M. (NDPS) 1252 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 07.07.2023 in connection with Suti Police Station Case No.199 of 2020 dated 24.05.2020 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.93 of 2020)

And

In Re: ***Hasan Mahaldar @ Habil Mahalder & Anr.***

... .. Petitioners

Mr. Anisur Rahaman

... .. for the petitioners

Mr. Sanjay Bardhan
Mr. Palash Ch. Majhi

... .. for the State

Petitioner no.1 is in custody for more than three years and petitioner no.2 is in custody for more than two years.

It is submitted on behalf of the petitioners that no narcotics was recovered from petitioner no.2. It is further submitted there is inordinate delay in trial. Co-accused have been enlarged on bail. Accordingly, they pray for bail.

Learned Advocate for the State opposes the prayer for bail and submits narcotics i.e. 10 ltrs. of *codeine phosphate*, which is above commercial quantity was recovered from petitioner no.1. During investigation, complicity of petitioner no.2 had transpired. He had absconded for a protracted period of time.

We have considered the materials on record. There are materials to show recovery of narcotics above commercial quantity from the petitioner no.1. Trial has progressed considerably. Hence, we are not inclined to grant bail to petitioner no.1.

Accordingly, the prayer for bail of petitioner no.1 viz. **(1)**

Hasan Mahaldar @ Habil Mahalder stands rejected.

We have considered the materials on record against petitioner no.2. We find that no narcotic substance was recovered from the possession of the petitioner no.2 and his complicity has transpired from the statement of co-accused before a police officer which is inadmissible in evidence. Under such circumstances, we are of the opinion petitioner no.2 has been able to rebut the statutory restrictions under Section 37 of the NDPS Act. In view of the aforesaid fact, we are of the opinion further detention of the petitioner no.2 is not necessary and he may be enlarged on bail however, subject to strict conditions.

Therefore, the petitioner no.2, namely **(2) Mehendi Hasan @ Mehedi Sk.**, 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 Judge, 5th Court, Berhampore, Murshidabad subject to condition that the said petitioner no.2 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 no.2, while on bail, shall not leave the jurisdiction of Suti Police Station except for the purpose of attending court proceedings and shall report to the Officer-in-charge, Suti Police Station once in a week 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 disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

