

19.07.2023
Sl. No.7
akd
[Rejected]

C. R. M. (NDPS) 1254 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 NCB Crime No. 79/2021/NCB/KOL dated 25.11.2021 under Sections 8(c)/22(c)/28/29 of the NDPS Act.

And

In Re: **Akhil Bhadra**

... .. Petitioner

Mr. Arnab Chatterjee
Mr. Amanul Islam
Mr. Sourav Mukherjee
Ms. Dhanasree Biswas

... .. for the petitioner

Mr. Arun Kumar Maiti
Mr. Sagar Saha

... .. for the NCB

It is submitted on behalf of the petitioner that he is in custody for about one year and eight months. It is further submitted co-accused have been enlarged on bail by the Hon'ble Apex Court. Accordingly, he prays for bail.

Learned Advocate for the NCB oppose the prayer for bail and submits no narcotics was recovered from the co-accused whereas 2445 bottles of *cough syrup* containing *codeine phosphate* was recovered from the petitioner. Trial has already commenced.

We have considered the materials on record. Statements of witnesses including contemporaneous document i.e. seizure memo disclose recovery of narcotic substance i.e. 2445 bottles of *cough syrup* containing *codeine phosphate*, which is above commercial quantity from the petitioner and others for non-medicinal purposes.

In *Mohd. Sahabuddin & Anr. vs. State of Assam*¹, the Apex Court held possession of drugs e.g. *phensedyl syrup* containing *codeine phosphate* for non-medicinal purposes would attract the provisions of

¹ (2012) 13 SCC 491

NDPS Act. No narcotics was recovered from co-accused who have been enlarged on bail. Their complicity have transpired from their statements under Section 67 of the NDPS Act which are inadmissible in law as per *Tofan Singh vs. State of Tamil Nadu*². Trial has already commenced and one witness has already been examined.

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.

Trial court is directed to conduct the trial with utmost expedition and conclude the same at an early date preferably within two years from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

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

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

² (2021) 4 SCC 1