

27.09.2023

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Allowed

C.R.M. (NDPS) No. 1578 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure arising out of seizure Case No. 03/NDPS/CL/BCPU/CCP/WB/2020-21 dated 02.03.2021 under Sections 21(C)/29 of the N.D.P.S. Act.

And

In Re : Sukhen Saha petitioner

Mr. Arnab Chatterjee

Ms. Poulami Bose

.....for the petitioner

Mr. Kaushik Dey

Ms. Manasi Mukherjee

.....for the Union of India

1. Learned Counsel for the petitioner submits he is in custody for 60 days. It is also contended there is no recovery of narcotics from him. He prays for bail.

2. Learned Counsel for the Union of India opposes the prayer for bail and submits petitioner had absconded. He is involved in trafficking of narcotics. Statement of co-accused under Section 67 of the NDPS Act implicates the petitioner.

3. We have considered the materials on record. No narcotics was recovered from the petitioner. His complicity is based on the statement of co-accused under Section 67 of NDPS Act. Statement is inadmissible in law in view of the law declared in ***Tofan Singh Vs. State of Tamil Nadu***¹. In the light of the nature of materials collected against the petitioner we are of the opinion he has been able to rebut the statutory

¹ (2021) 4 SCC 1

restrictions under Section 37 of the NDPS Act and may be enlarged on bail, however, subject to restrictions in order to ensure his attendance in Court.

4. Accordingly, we direct that the petitioner 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 NDPS Act, Berhampore, Murshidabad, subject to conditions 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 conditions that while on bail he shall not leave the jurisdiction of district Murshidabad until further orders except for attending court proceedings and shall report to the investigating officer concerned once in a week until further orders.

5. In the event 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.

6. The application for bail is, accordingly, allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

