

05.10.2023

9

sdas

Allowed

C.R.M. (NDPS) No. 1624 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Habibpur Police Station Case No. 398 of 2022 dated 13.12.2022 under Sections 21(C)/23 of the N.D.P.S. Act.

And

In Re : Ranjit Mandal petitioner

Mr. Amitabha Karmakar

Mr. Arup Kumar Bhowmick

.....for the petitioner

Mr. Ranabir Roy Chowdhury

Mr. Mainak Gupta

.....for the State

1. Learned Counsel for the petitioner submits he is in custody for 210 days. It is also submitted recovery was made from an open place which is accessible to all. Investigation is complete. He prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits on the showing of the petitioner narcotics above commercial quantity was recovered. Bail prayer of the petitioner has been rejected.

3. We have considered the materials on record. It is contended on the leading statement of the petitioner narcotics above commercial quantity was recovered from an open place. Admittedly such place is accessible to all. In view of law declared in ***Aslam Parwez vs. Govt. of NCT of Delhi***¹ mere recovery from an open place on the strength of the statement

¹ (2003) 9 SCC 141

under Section 27 of the Evidence Act would not lead to an inference of possession. Bail prayer of the petitioner was rejected earlier at the stage of the investigation. Presently investigation is complete and there is no development in the matter. Accordingly, we are of the opinion petitioner has been able to rebut the statutory restrictions under Section 37 of the NDPS Act and may be enlarged on bail.

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-cum-Additional District Judge, 4th Court, Malda, subject to condition that 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.

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.)

