

JPD-19
Ct No.01
18.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRM (NDPS) 711 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 08.09.2023 in connection with NDPS Case No. 52 of 2017, NCB Crime No. 34/NCB/KOL/2017 dated 24.05.2017 under Section 20(b)(ii)(C) of the NDPS Act, 1985..

And

In the matter of: Atul Sarkar

.... petitioner

Ms. Pratusha Dutta Chowdhury

... for the petitioner

Mr. Sudipto Kr. Mazumder,
Mr. Sudip Kr. Paul

... for the NCB

1. Learned counsel for the petitioner contends that no case has been made out against the petitioner.
2. The seizure was allegedly made from an abandoned house, the ownership of which could not be traced to the petitioner. By placing reliance on the cross-examination of the Seizing Officer, it is contended that admittedly there was nobody present at the time of seizure in the house and the Seizing Officer did not collect any document to ascertain ownership of the house nor did he submit any requisition to the Anchal Office of the locality to ascertain the ownership of the house or could recollect whether he ascertained

the holding number of the house after the incident. Such facts are evident from his evidence.

- 3.** The petitioner was arrested after four years of the alleged seizure. It is submitted that there is nothing to connect the alleged offence with the petitioner and, as such, the petitioner ought to be granted bail.
- 4.** The NCB vehemently opposes the prayer for bail. By pointing out to the cause title of the present application, it is argued that the petitioner has disclosed his address at the same locality as the place of seizure. That apart, the petitioner is an absconder, since he failed to make himself available despite notice having been served thrice at his address. Moreover, in the year 2019, a prayer of the petitioner for anticipatory bail in regard to the same offence was rejected.
- 5.** Hence, it is submitted that the petitioner's prayer be dismissed.
- 6.** The allegations made by the petitioner regarding the mitigating circumstances and involvement of the petitioner are open to be argued by the petitioner in trial. However, what plays in our mind is the fact that despite notice being served several times, the petitioner had been absconding throughout the trial before being apprehended, in spite of the petitioner's prayer for anticipatory bail having been rejected in the year 2019.

7. The rest of the arguments shall be taken care of in the trial and it would be premature to deal with the same at this juncture. In any event, it has been submitted by the NCB that five of the seven witnesses have already been examined and the trial is on the verge of conclusion.
8. Keeping in view the above circumstances, we are not inclined to grant bail to the petitioner.
9. Hence, CRM (NDPS) 711 of 2023 is dismissed, with the expectation that the trial shall be concluded as expeditiously as possible, positively within three months from date.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)