

19.01.2024

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rejected

C.R.M.(NDPS) No. 133 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kaliachak Police Station Case No. 1335 of 2022 dated 19.11.2022 under Sections 379/411/413/414 of the Indian Penal Code and Sections 21(c)/27A/29 of the NDPS Act.

And

In Re : Amir Hamja

.... Petitioner

Md. Wasim Akram

....for the petitioner

Mr. Sudip Kumar

..... for the State

1. Learned Counsel for the petitioner submits there is non-compliance of Section 42 and Section 50 of the NDPS Act. No prior information had been recorded and sent to the superior police officer. Opportunity of search before a Gazetted Officer or Magistrate had not been given to the accused. He is suffering from 50% disability and allegation of carrying 272 bottles of Phensedyl Syrup and mobile phones are patently absurd. He prays for bail.

2. Learned Counsel for the State opposes the bail prayer.

3. We have considered the materials on record. Members of BSF ambushed 10 to 12 persons transporting narcotics. Petitioner was caught and 272 bottles of Phensedyl Syrup with 67 mobile phones were recovered. As the recovery was not from the person but from a sack carried by the petitioner and

miscreants Section 50 of NDPS Act does not come into play. Moreover recovery was made from open field and not from an enclosed place. Under such circumstances Section 42(2) of the NDPS Act also does not apply.

4. Nature of disability of the petitioner which does not completely render his movements. On the other hand, he was aided and abetted by 10 to 12 unknown persons. Under such circumstances, we are not inclined to come to a conclusion that in light of his disability petitioner could not have participated in the crime. Accordingly, we are not inclined to grant bail to the petitioner.

5. The application for bail is, thus, rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)