

05.02.2024.

06.

Ct.No.28.

as

(Allowed)

C.R.M. (NDPS) 218 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No.90 of 2023 arising out of Gazole P.S. Case No.747 of 2023 dated 18.09.2023 under Sections 21(c)/25/27A/29 of the NDPS Act.

In the matter of : **Bhodu Mollah.**

.... Petitioner.

Mr. Wasim Akram.

...for the Petitioner.

Mr. Ranadeb Sengupta.

...for the State.

1. Petitioner is in custody for 140 days. No narcotics was recovered from his possession. It is further contended complicity of the petitioner has transpired from the statement of co-accused. Accordingly, he prays for bail.

2. Learned Advocate for the State opposes the bail prayer. He contends petitioner is a member of gang which are dealing in narcotics. As per statement of co-accused phensedyl syrup was to be supplied to the petitioner. Accordingly, petitioner was arrested and on their identification vehicle carrying phensedyl syrup was recovered. It is also contended recovery was videographed and independent witnesses state petitioner was present at the time of recovery.

3. We have considered the materials on record. Four co-accused viz., Samrul Sekh, Gulu Sekh, Dilnawaj and Md. Zafar were detained while travelling in a car bearing No.WB 02AF/2948. They made statements disclosing complicity of the petitioner as intended recipient of narcotics which was to be

transported in another vehicle. Petitioner was arrested and brought to the spot. Thereafter, on the identification of the aforesaid persons, another vehicle bearing No.WB 74X/5880 carrying 2000 bottles of phensedyl syrup for non-medical use was recovered. Though prosecution has argued that the offending vehicle carrying narcotics was shown to them by petitioner, FIR discloses the vehicle had been detained on the showing of four persons who had been earlier arrested.

4. In view of the aforesaid facts it appears complicity of the petitioner is primarily based on statement of co-accused before police officer and not on their subsequent conduct leading to recovery. We have, however, taken note of the fact that the petitioner was present at the time of recover.

5. In view of scanty materials on record against the petitioner, we are of the opinion he has been able to rebut statutory restrictions under Section 37 of the N. D. P. S. Act and may be enlarged on bail.

6. Accordingly, the petitioner viz., **Bhodu Mollah** 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 the N.D.P.S. Act, Malda subject to condition 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 or commit similar offences in future.

7. 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.

8. Presence of the I.O. is noted and dispensed with.

8. This application for bail is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)