**07.05.2024.**
**04.**
**Ct.No.28.**
**as**
**(Allowed)**

**C.R.M. (NDPS) 377 of 2024**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Special Case No.12 of 2022 arising out of NCB Crime No.04 of 2022 under Section 8(c)/21(c)/22(c)/23/25/29 of the NDPS Act.

In the matter of : **Abdus Sadek Sarkar.**

.... Petitioner.

Md. Sabir Ahmed,
Mr. Biswajit Manna.

...for the Petitioner.

Mr. Arun Kr. Maiti (Mohanty),
Mr. Pralay Bhattacharya,
Ms. Tanusree Ghosh.

...for the NCB.

1. Petitioner submits he is a dealer in medicine. He also has various other businesses. In connection with some of the business activities, he had monetary transactions with co-accused viz., Om Narayan Gupta. Out of suspicion, he was arrested in December, 2023. No narcotics was recovered from his possession. Prosecution case is primarily based on CDRs collected during investigation showing telephonic conversations between himself and co-accused as well as monetary transactions *inter se*. He contends his bank account was frozen by the investigating agency in course of SAFEMA proceedings. But the freezing order was not upheld. Relying on the order of the adjudicating authority, petitioner contends the money transactions between himself and co-accused viz., Om Narayan Gupta cannot be said to be tainted. Accordingly, he prays for bail.

2. Learned Advocate for NCB contends petitioner is a conspirator in the illegal dealing of drugs for non-medicinal purposes. He entered into conspiracy with Om Narayan Gupta and others and diverted medicinal products to them for non-medicinal use. Monetary transactions between the parties corroborate this fact. It is further contended a large consignment of phensedyl syrup and buprenorphine was recovered from a room belonging to Om Narayan Gupta. He was present in the room. One of the bank accounts of Om Narayan Gupta maintained with Punjab National Bank (A/c. No.0236250324571) was not the subject matter of adjudication before the authority under SAFEMA. Statement of accounts show monetary transactions between petitioner and co-accused.

3. In rebuttal, learned Advocate reiterates monetary transactions with him in the above cited account and other accounts of Om Narayan Gupta are from legitimate business activities like supply of building materials etc.

4. We have given anxious consideration to the rival submissions of the parties. Petitioner contends he is not only a dealer of medicine but also deals in building materials, cosmetic products etc. Bank transactions between him and Om Narayan Gupta were with regard to *bona fide* commercial activities. During investigation, bank account of the petitioner was frozen but the adjudicating authority under SAFEMA set aside the freezing order, inter alia, holding that there is no direct nexus between illegal business and proceeds in the said

account. Similarly, nothing is placed on record to show that the transactions *inter se* in the bank accounts cited before us were for illegal supply of medicines and not other purposes. It is the duty of the prosecution to clearly lay down the foundational facts with regard to conspiracy. Alternate explanation offered by the defence is plausible. No narcotics was recovered from the petitioner. Nothing is placed on record to show that the identity of the medicinal products i.e. batch number etc. stored by Om Narayan Gupta can be traced to the petitioner.

5. In view of the aforesaid circumstances, we are of the opinion petitioner has been able to rebut statutory restrictions under Section 37 of the NDPS Act. We have also looked into the criminal antecedents. Though one of the cases relates to narcotics, no recovery was made from the petitioner in the said case also.

6. Hence, we are inclined to grant bail to the petitioner.

7. Accordingly, the petitioners viz., **Abdus Sadek Sarkar** shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the NDPS Act, Balurghat Dakshin Dinajpur 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 and on further condition, petitioner while on bail, shall meet the Investigating Officer once in a month until further orders.

8. 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.

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

**(Gaurang Kanth, J.)** **(Joymalya Bagchi, J.)**