

05.03.2024.
22.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 421 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Spl. NDPS Case No.65 of 2021 arising out of Dalkhola P.S. Case No.183 of 2021 dated 26.08.2021 under Sections 21(c)/29 of the NDPS Act.

In the matter of : **Anarul Haque.**

.... Petitioner.

Mr. Navanil De,
Mr. Abhishek Sarkar,
Mr. Dipanjan Dutta.

...for the Petitioner.

Ms. Sreyashee Biswas.

...for the State.

1. Petitioner is in custody for two years and six months. He submits heroin was recovered in several packets weighing 140 grms, 95 gms and 27 gms respectively. Samples drawn from two packets weighing 140 grms and 95 gms tested positive but the other sample drawn from packet containing 27 gms tested negative. Hence, amount of heroin recovered is below commercial quantity. Accordingly, he prays for bail.
2. Learned Advocate for the State contends bail prayer of co-accused viz., Rakibul Haque @ Rakimul @ Rakibul was rejected in CRM (NDPS) 3094 of 2024. Trial is in progress.
3. We have considered the materials on record. While rejecting the bail prayer of co-accused viz., Rakibul Haque @ Rakimul @ Rakibul, this Court had not considered the fact that the contraband had been recovered in three separate packets, one of which had tested negative.

4. In the present bail application, this issue has been agitated which had not been considered while rejecting the bail of co-accused viz., Rakibul Haque @ Rakimul @ Rakibul. As the contraband from which samples were drawn were in three separate packets, quantity of narcotics recovered must be calculated after discounting the weight of the packet whose sample tested negative i.e. 27 gms. Subtracting the aforesaid weight from the total quantity recovered i.e. 262 gms, quantity of narcotics recovered amounts to 235 gms. i.e. below commercial quantity.

5. Under such circumstances statutory restrictions under Section 37 of the N. D. P. S. Act does not apply to the bail plea of the petitioner. He is in custody for a considerable period of time. Though four witnesses have been examined. There is little possibility of trial concluding in the near future.

6. Hence, we are inclined to release the petitioner on bail.

7. Accordingly, the petitioner viz., **Anarul Haque** 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, Raiganj, Uttar 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.

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.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)