

12.03.2024

14

sdas

Allowed

C.R.M. (NDPS) No. 477 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NCB Crime No. 66/NCB/Kol/2021 under Sections 8(c)/12/20(b)(ii)(A)/22(c)/23/29 of the N.D.P.S. Act.

And

In Re : Sadiq Vali @ RAX petitioner

Mr. Apalak Basu

Mr. Nazir Ahmed

Ms. Ritushree Banerjee

Ms. Sanghamitra Mridha

Mr. Soumyajit Chakraborty

.....for the petitioner

Mr. Sourav Chatterjee

Mr. Sagar Saha

.....for the NCB

1. Learned Counsel for the petitioner submits he is in custody for one year. It is also submitted he was falsely implicated in a criminal case and was in custody. While in custody on 31.07.2021 a parcel of 500 gms. of Ganja despatched in the name of Kanhaiya Kumar Sinha was intercepted in transit. Subsequently 2500 LSD bots weighing 45.60 gms. were recovered from the co-accused, Dhiraj Kumar. There is no legally admissible evidence implicating the petitioner in the crime. Accordingly, he prays for bail.

2. Learned Counsel for the NCB opposes the bail prayer and submits petitioner has criminal antecedents. He is a member of an international racket who are dealing in narcotics. Transactions took place in the dark web through crypto currency. Trial is in progress. Petitioner is a resident outside the State. If he is released on bail he shall abscond.

3. We have considered the materials on record in the light of the rival submissions. Profile of the case shows transborder dealing in narcotics. 500 gms of Ganja was recovered at a foreign post office which had been despatched in the name of Kanhaiya Kumar Sinha. Subsequently 2500 LSD bots owing 45.60 gms. had been recovered from Dhiraj Kumar. Prosecution contends petitioner is a conspirator in the transborder dealing of drugs. Apart from statements under Section 67 of the NDPS Act which is inadmissible in evidence in view of *Tofan Singh vs. State of Tamil Nadu*¹ no legally admissible evidence implicating the petitioner in the crime is placed on record. No doubt a charge of conspiracy may be proved through conduct of co-conspirators on the basis of inferential materials. However, to attract complicity on the strength of conduct of co-conspirators prosecution must satisfy the Court with regard to prima facie evidence of conspiracy. Mere criminal antecedent and that too not related to narcotics may not in our opinion justify such inference. Petitioner is in

¹ (2021) 4 SCC 1

custody for more than a year. There is little possibility of trial concluding in the near future. Two witnesses have been examined in full and examination of third witness is in progress. Prosecution proposes to examine eleven witnesses in all. Apprehension expressed on behalf of the prosecutor with regard to possibility of abscondence of the petitioner who is the resident of a different State may be addressed by subjecting him to strict conditions. Accordingly, we are inclined to grant bail to the petitioner.

4. Accordingly, we direct that the petitioner 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, Bench-I, NDPS Act, City Sessions Court, Calcutta, on further condition that petitioner while on bail shall remain within the Municipal limits of Kolkata and shall provide address where he shall presently reside to the investigating officer and learned court below and shall report to the Intelligence Officer, NCB, Kolkata Zonal Unit once in a week until further orders. Petitioner 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.

5. 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.

6. The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)