

C. R. M. (NDPS) 479 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 27.02.2024 in connection with Berhampore Police Station Case No.1258 of 2021 dated 29.10.2021 under Sections 22(c)/29 of the NDPS Act read with Section 27A of the Drugs and Cosmetics Act. (NDPS Case No.235 of 2021)

And

In Re: **Dwijendranath Sarkar @ Swijen @ Dwijen Mondal**
... .. Petitioner

Mr. Tapodip Gupta
... .. for the petitioner

Mr. Bibaswan Bhattacharya
... .. for the State

1. Heard the learned Advocates appearing for both the parties.
2. We have considered the materials on record. No narcotic substance was recovered from the possession of the petitioner. His complicity has transpired from the statement of co-accused before a police officer which is inadmissible in evidence. Hence, there is no legally admissible evidence to implicate the petitioner in the present case.
3. However, it is argued on behalf of the State petitioner has criminal antecedents and narcotics i.e. 300 bottles of *phensedyl syrup* was recovered from him in another case. We note petitioner is in custody in the said case and the same is at the stage of arguments. But in the present case his complicity is based on inadmissible evidence. Hence, we are of the opinion petitioner has been able to rebut the statutory restrictions under Section 37 of the NDPS Act and may be released on bail.
4. Therefore, the accused/petitioner, namely **Dwijendranath Sarkar @ Swijen @ Dwijen Mondal**, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only), 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-cum-Additional District Judge, 5th Court, Berhampore, Murshidabad subject to condition that the said 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 or commit similar offences in future.

5. In the event he fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.
6. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)