

18.04.2024
Sl. No.10
akd
[ALLOWED]

C. R. M. (NDPS) 652 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 28.03.2024 in connection with Raghunathganj Police Station Case No.549 of 2022 dated 01.07.2022 under Sections 21(c)/29 of the NDPS Act and Sections 182/465/468/471/475/120B of the Indian Penal Code. (NDPS Case No.162 of 2022)

And

In Re: **Abdul Aziz**

... .. Petitioner

Mr. Arindam Jana
Md. Sarwar Jahan
Ms. Tapati Sarkar

... .. for the petitioner

Mr. S. S. Imam
Mr. Dipankar Paramanick

... .. for the State

1. It is submitted on behalf of the petitioner that he was initially implicated in Kaliachak Police Station Case No.688 of 2022. In the said case it was alleged petitioner and others had abducted Rahim Biswas in a Toyota Innova vehicle bearing registration No. WB06F-5930. As per statement of the victim before Magistrate, they had been apprehended by the officers of Suti Police Station and thereafter handed over to Kaliachak Police Station. Recovery of the victim took place around 02:45 A.M. on 30.06.2022. Relying on these materials it is contended prosecution case that 40 ltrs. of *codeine mixture* was recovered from the aforesaid vehicle and the petitioner and others were present therein is patently absurd. Accordingly, he prays for bail.
2. In the light of the aforesaid submission, we called for the case diary in Kaliachak Police Station Case No. 688 of 2022. The case diary has been produced in court. Investigating Officer of the present case is present before us. His presence is noted and dispensed with.

3. Learned Advocate for the State opposes the prayer for bail and submits recovery of narcotics was videographed. Statement of the victim before police in Kaliachak Police Station Case No. 688 of 2022 shows the miscreants including the petitioner had fled after offloading him at Chander More toll plaza.
4. We have considered the materials on record in both the cases. In Kaliachak Police Station Case No. 688 of 2022 it is alleged that petitioner and others had abducted one Rahim Biswas in a vehicle at around 10.40 hrs. Rahim's wife lodged FIR at 00:45 hrs at Kaliachak Police Station. Rahim Biswas was recovered at around 02:45 A.M. on the next day. As per his statement before Magistrate the vehicle was apprehended at Chander More toll plaza and police attached to Suti Police Station had rescued him and detained the miscreants. Thereafter the victim and the miscreants were handed over to police attached to Kaliachak Police Station. This statement shows the accused in the Kaliachak case had been in the custody of police on and from 02:45 A.M. on 30.06.2022. If that is so, prosecution case that petitioner and others were carrying 40 ltrs. of *codeine mixture* in the same vehicle at 10:45 A.M. on 30.06.2022 is highly improbable.
5. On the other hand, defence version that petitioner and others were in the custody of Kaliachak police earlier and thereafter had been falsely implicated in the present case finds support from the aforesaid statement of Rahim Biswas.
6. In rebuttal, learned Advocate for the State refers to the statement of Rahim Biswas recorded before police wherein he claimed miscreants had dropped him at the toll plaza and fled away.
7. We are loathe to give credence to the statement recorded before police in the light of the clear assertion of the witness before

Magistrate that the miscreants had also been apprehended at the time of his recovery and handed over to Kaliachak police.

8. In this backdrop, we are constrained to hold defence has placed on record credible materials which improbabilises the prosecution case. Possibility of stage managing the recovery of narcotics and videographing the same cannot be ruled out. 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 however, subject to strict conditions.
9. Therefore, the accused/petitioner, namely **Abdul Aziz**, 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 & Sessions 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 and on further condition that the petitioner, while on bail, shall not leave the district of Murshidabad except for the purpose of attending court proceedings in other cases and shall provide the address where he shall presently reside to the Investigating Agency as well as the jurisdictional court and shall report to the Officer-in-charge, Raghunathganj Police Station once in a week until further orders.
10. 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.

11. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)