

09.05.2024

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Allowed

C.R.M. (NDPS) No. 786 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NCB Crime No. 05/NCB/KOL/2021 dated 04.02.2021 under Sections 18(b)/25/28/29 of the NDPS Act.

And

In Re : Kabita Ghosh petitioner

Mr. Saibal Mondal

Mr. Arpayan Mukherjee

.....for the petitioner

Mr. Arun Kumar Maiti (Mohanty)

Mr. R. R. Mohanty

.....for the NCB

1. Learned Counsel for the petitioner submits she is in custody for more than three years. It is also submitted she was no way connected with the alleged illegal dealing in narcotics which was conducted by her son, Samiran Ghosh, the absconding accused. NCB personnel falsely implicated her after cash was recovered from the house. Proceeding under SAFEMA initiated against the petitioner has not been established. Accordingly, she prays for bail.

2. Learned Counsel for the NCB opposes the prayer for bail and submits petitioner stated before NCB officials that her son had handed money to her to pay the co-accused who were to supply narcotics. Cash amounting to Rs.6.5 lakhs was recovered from her possession. Three witnesses have already

been examined and four more witnesses shall be shortly examined.

3. We have considered the materials on record. Prosecution case against the petitioner is that her son Samiran Ghosh, had handed over cash to her to pay to the co-accused for supply of narcotics. Samiran Ghosh had fled from the spot and cash was recovered from the house in presence of his mother i.e. the petitioner. Statement of the petitioner before enquiry officer under Section 67 of the NDPS Act is inadmissible in law. If her statement is not taken into consideration mere presence of the petitioner in her house from where cash was recovered cannot lead to the irresistible inference that she had requisite knowledge with regard to the transaction in narcotics. It is also relevant to note proceeding under SAFEMA was initiated against the petitioner's son only. Keeping in mind the extent of complicity of the petitioner in the crime and the protracted period of detention suffered by her, 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, Special Court under NDPS Act-cum-learned Additional Sessions Judge, 3rd court, Asansol, Paschim Bardhaman, on further conditions that while on bail petitioner shall remain within the jurisdiction of Pandabeswar Police Station until further orders except for the

purpose of attending court proceeding and shall report to the Officer-in-Charge, Pandabeswar Police Station 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 her 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.)