

03.01.2024

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Allowed

C.R.M. (NDPS) No. 2077 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Hili Police Station Case No. 225 of 2022 dated 22.09.2022 under Sections 21(c)/22(c)/23(c)/27A of the N.D.P.S. Act.

And

In Re : Dipak Ghosh @ Tagar @ Taigor ..... petitioner

Mr. Kaushik Choudhury

.....for the petitioner

Ms. Amita Gaur

.....for the State

1. Learned Counsel for the petitioner submits recovery was made from a shop of one Bablu Ghosh, a co-accused. Petitioner has no role to play in dealing in narcotics. Accordingly, he prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits petitioner is the brother of co-accused, Bablu Ghosh.

3. We have considered the materials on record. Petitioner and Bablu Ghosh reside in joint mess. Recovery of narcotics was made from the shop run by Bablu Ghosh. Bearing in mind the fact that the petitioner is a relation and ordinarily resided in the same premises with Bablu Ghosh, his presence in or around the place of occurrence *per se* cannot be treated as an incriminating circumstance. No other material showing his complicity in dealing in narcotics has been placed before us.

Keeping in mind the aforesaid facts we are of the opinion petitioner has been able to rebut the statutory restrictions under Section 37 of the NDPS Act and may be enlarged on bail.

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, Balurghat, subject to condition that 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.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**