

02.01.2023.
02.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 2057 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with N Case No.11 of 2023 arising out of Excise SI Seizure List No.09 of 2023-2024 dated 15.06.2023 under Sections 21(c)/29 of the NDPS Act.

In the matter of : **Sandip Debnath @ Sandip Deb Nath.**
.... Petitioner.

Mr. Sourav Chatterjee,
Mr. Kaustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar.

...for the Petitioner.

Mr. Debasish Roy, Id. P.P.,
Mr. Palash Ch. Majhi.

...for the State.

1. Petitioner is in custody for 81 days. He contends he is in no way connected with the alleged recovery of narcotics i.e. phensedyl syrup which was made from co-accused. He has valid licence to deal in medicinal products including phensedyl syrup. Licence has not been suspended or cancelled. He prays for bail.

2. Learned Public Prosecutor contends petitioner had purchased large consignments of phensedyl syrup from two firms viz., Vickey Pharmacy and Ambey Stores in Kolkata. The product was manufactured by one M/s. Laborate Pharmaceutical. He has not been able to account for disposal of the said products as per relevant rules. CDRs show frequent telephonic conversations between petitioner and co-accused from whom recovery was made.

3. We have considered the materials on record. Petitioner is a dealer in medicinal products. He has a valid licence and we are informed that the said licence is subsisting till date. Failure to account for the medicinal products sold by him in his books at its height would amount to breach of the provisions of Drug and Cosmetics Act and the rules framed thereunder. To attract the graver offences under the NDPS Act, prosecution is required to demonstrate that the medicinal products of the petitioner had been diverted for non-medicinal purposes. In order to assess the involvement of the petitioner in that area, it is necessary for the prosecution to demonstrate whether the medicinal products found in the possession of the co-accused pertain to the consignments sold to the petitioners. Though complaint has been filed, nothing is placed on record to establish such link. Prosecution primarily relies on the telephonic conversations between petitioner and co-accused from whom the narcotics was recovered to establish its case.

4. In this backdrop, we are constrained to observe the evidence on record is too sketchy to establish a prima facie case that petitioner had diverted medicinal products in his custody for non-medicinal purposes. Further investigation does not pertain to the petitioner.

5. Under such circumstances, we are of the opinion petitioner has been able to rebut statutory restrictions under Section 37 of the N. D. P. S. Act and may be enlarged on bail subject to conditions.

6. Accordingly, the petitioner viz., **Sandip Debnath @ Sandip Deb Nath** 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 the N.D.P.S. Act, Barrackpore, North 24-Paraganas subject to condition that he 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 and on further condition that the petitioner while on bail shall remain within the district of North 24-Paraganas and report to the investigating agency as and when called for.

7. In the event the 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.

8. This application for bail is, thus, disposed of.

(Gaurang Kanth,J.)

(Joymalya Bagchi, J.)