

11.01.2024

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Allowed

C.R.M. (NDPS) No. 2096 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NCB Crime No. 03/NCB/KOL/2022 under Sections 8(c) of the NDPS Act read with Sections 20(b)(ii)(c)/25/29 of the N.D.P.S. Act.

And

In Re : Samar Halder @ Raju petitioner

Mr. Pradip Kumar Kundu

.....for the petitioner

Mr. Arun Kumar Maiti (Mohanty)

Mr. Pradyat Saha

.....for the NCB

1. Learned Counsel for the petitioner submits he is in custody for 113 days. It is also submitted that investigation is complete. No narcotics was recovered from his possession. He prays for bail.

2. Learned Counsel for the NCB opposes the prayer for bail and submits petitioner did not co-operate with investigation. In fact, he destroyed his mobile phone and SIM Card.

3. We have considered the materials on record. Complicity of the petitioner has transpired from the statement of the co-accused before NCB officers which are inadmissible in law in view of *Tofan Singh vs. State of Tamil Nadu*¹. No doubt his conduct in not attending interrogation is not appreciable.

¹ (2021) 4 SCC 1

But no further investigation was done after he had been apprehended to lend credence to the accusation of conspiracy. Mere telephonic conversations without the contents being known would tantamount to weak and scanty evidence. Hence 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-cum-learned Additional District Judge, 5th Court, Berhampore, Murshidabad, 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.)