

16.01.2024
Sl. No.13
akd
[Rejected]

C. R. M. (NDPS) 2112 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.12.2023 in connection with Baduria Police Station Case No.321 of 2023 dated 28.05.2023 under Sections 21(c)/29 of the NDPS Act.

And

In Re: ***Atanu Saha***

... .. Petitioner

Mr. Angshuman Chakraborty
Mr. Shashanka Shekhar Saha

... .. for the petitioner

Mr. Arijit Ganguli
Mr. Pratick Bose

... .. for the State

1. It is submitted on behalf of the petitioner that recovery was not made in presence of a Gazetted officer. It is further submitted though recovery was of a brown colour substance, the sample sent for FSL test is described as yellow in colour. Finally, it is submitted the videography has not been supplied to the petitioner. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail.
3. We have considered the materials on record. Recovery was made from a bag carried by the petitioner. As the recovery was not from his person but from a bag, applicability of Section 50 of the NDPS Act does not arise. Minor variation with regard to description of the article vis-a-vis the sample may be due to subjective assessment and such minor variation does not go to the root of the prosecution case entitling the petitioner to bail.
4. It shall be open to the petitioner to seek copy of the videography in course of the proceeding before the trial court. Hence, no case has

been made out to rebut the statutory restrictions under Section 37 of the NDPS Act. Accordingly, we are not inclined to grant bail to the petitioner.

5. The application for bail is thus rejected.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)