

14.05.2024

Sl. No.47
akd

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

C. R. M. (DB) 177 of 2024

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 19.03.2024 :

A N D

In Re : Union of India

... Petitioner

Mr. Sudipto Kumar Mazumder .. Id. Dy. Solicitor General of India
Mr. Sudip Kumar Paul

... .. for the petitioner-NCB

Mr. Kumar Shantanu

... .. for the opposite party

1. Learned Deputy Solicitor General of India prays for cancellation of bail granted to opposite party viz. Amjad Miah @ Amjad Hussain Miah @ Amjad Hossain Miah. He contends opposite party and his son viz. Asraful Alam, an absconding accused were dealing in narcotics. On 19.08.2023 a specific information was received that Asraful Alam was illegally dealing in narcotics i.e. *phensedyl cough syrup* and *Yaba* tablets from his house. It was reduced into writing and the matter was placed before the superior officer. Thereafter raid was conducted in the house of Asraful Alam. In presence of opposite party 235 gms. of *Yaba* tablets, *phensedyl syrup* bottles and a firearm were recovered from the said house. Unaccounted cash was also recovered. Opposite party was present in the house. In course of investigation, he was arrested. Without considering the materials collected during investigation and the restrictions under Section 37 of the NDPS Act, he was enlarged on interim bail on 12.10.2023. Subsequently interim bail was confirmed on 02.03.2024.

2. Learned Advocate for the opposite party contends his client is in no way involved in the narcotics trade. Recovery was made from the portion of the house which was in occupation of his son viz. Asraful. In his voluntary statement before NCB official opposite party stated his son was dealing in narcotics. Hence, the bail order does not call for interference.
3. We have considered the rival versions of the parties. In paragraph 10 of the petition of complaint it has been, inter alia, averred that during search the search team noticed two plastic packets in the varendah where Asraful was living. On opening the packets narcotics was recovered. The uncontroverted allegation in the petition of complaint clarifies that narcotics was recovered from the portion of the house which was occupied by co-accused viz. Asraful and not the opposite party herein. Another portion of the premises was occupied by opposite party who is the father of Asraful. Even in his voluntary statement before NCB official, opposite party stated his son, Asraful was dealing in narcotics.
4. In view of the aforesaid circumstances, it is difficult to come to a conclusion that opposite party had conscious possession of narcotics which was recovered from the portion of the premises in occupation of co-accused viz. Asraful.
5. In the light of the aforesaid facts, we are of the opinion opposite party had been able to rebut the statutory restrictions under Section 37 of the NDPS Act. Bail granted to him does not call for interference.
6. CRM (DB) 177 of 2024 is accordingly, dismissed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

