

Court No. 1

02.05.2024

(JPD 75)

(S. Banerjee)

Calcutta High Court

In the Circuit Bench at Jalpaiguri

Appellate Side

(Allowed)

CRM (NDPS) 199 of 2024

In re: ^c An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kalimpong Police Station Case No. 258 of 2022 dated 24.09.2022 under Sections 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Alain @ Alen Tamang @ Aelen Tamang
...petitioner

Ms. Supriya Singh
Ms. Rishita Chakraborty

... for the petitioner

Mr. Abhijit Sarkar
Mr. Sourav Ganguly

... for the State

1. Heard learned counsel for the parties.
2. In support of the application for bail, learned counsel for the petitioner submits before this court that the present accused-petitioner is languishing in JC for more than 19 months. In course of her submission learned counsel for the petitioner draws our attention to the written complaint as lodged as against the present accused-petitioner and the other co-accused. It is submitted that the present accused-petitioner, being a poor driver of a commercial passenger vehicle, is no way involved in the alleged crime and from the FIR and the forwarding report it would reveal that no

contraband was seized from the conscious possession of the present accused-petitioner. It is further submitted by producing the photocopy of the order dated 26.09.2022 as passed in Special NDPS Case No. 7 of 2021 by the learned Judge Special Court (NDPS), Kalimpong that the other FIR-named co-accused is a habitual offender from whose person contraband was seized and other contraband was alleged to have been seized under the driver's seat.

3. Learned counsel for the State opposes the prayer for bail stating, inter alia, that out of 17 charge-sheeted witnesses, 7 witnesses have been examined and schedule has been fixed for examination of the remaining charge-sheeted witnesses and there is every possibility that the trial before the learned Trial Court will come to a conclusion at the earliest.
4. We have considered the rival contentions of the learned counsel for the parties. We have meticulously perused the entire materials as placed before this court. Prima facie it appears to us that the present accused-petitioner was a driver of the commercial passenger vehicle. It further appears that no contraband was seized from the possession of the present accused-petitioner. Materials have been placed to show that some contraband was seized from the person of the co-accused who is prima facie found to

be a habitual offender having criminal antecedents and the chance of keeping the bag containing the contraband article under the driver's seat in a passenger vehicle by any of the passengers of the said vehicle, cannot be ruled out at least prima facie.

5. In view of the discussions made hereinabove and also considering the period of detention, we are of the considered view that the present accused-petitioner is successful in rebutting the statutory restrictions under Section 37 of the NDPS Act.
6. Accordingly, the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- with two registered sureties of Rs. 5,000/- each, one of whom must be local, to the satisfaction of the Learned Judge, Special Court (under NDPS) at Kalimpong with a further direction that the present accused-petitioner shall remain in the jurisdiction of the Kalimpong Police Station till conclusion of the trial unless such condition is relaxed by the learned Trial Court. It is further ordered that the present accused-petitioner shall deposit duly authenticated photocopies of his Aadhar Card and EPIC before the learned Trial Court, with a further direction that the present accused-petitioner shall appear on each and every date of substantive hearing before the learned Trial Court subject to the provision of Section 317 Cr.P.C.

7. It is, however, made clear that our observation as quoted above is purely limited for the instant application for bail and the learned Trial Court is requested not to be persuaded with any of the observations made hereinabove at the time of disposal of the case as pending before him.
8. All parties shall act on the server copy of this order duly downloaded from the official website of this court.

(Soumen Sen, J.)

(Partha Sarathi Sen, J.)