

NDPS Case No.25 Of 2022.
JO CODE No.WB00575
CNR No.WBUD01-000720-2022

Order No.25

03.04.2023

Both the charge sheeted accused persons namely Tilak Bhuiya and Hossain Ali in J/C are produced from J/C and remanded to J/C.

One bail application on behalf of Hossain Ali is filed and the same is moved by his Ld. Advocate who submits that his client is innocent and he was not named in FIR. Nothing has been recovered from his possession. Police at the time of filing CS has implicated his client by showing absconding. Since his client is innocent then the filing CS and case against his client was not known to him. His client is having permanent hearth and residents and if he is allowed bail he will face the trial.

Ld. Advocate further submits that there is no other bail application of this petitioner pending before Hon'ble High Court, Calcutta or Hon'ble Supreme Court.

In support of his such claim one affidavit is filed by the wife of the petitioner that no such bail application u/s.439 of Cr.P.C. pending before any Hon'ble higher forum.

Ld. PP raises objection by submitting that his name has been transpired in CS and he was long absconding.

Having heard both sides. Having perused the case record and case diary, it appears that the case has been initiated on the basis of the complaint lodged by HQ Kalyan Singh of B. Coy. 135 Bn. BSF in which it is alleged that at the time of border duty on 12.03.22 around 10.14 am the civilian herein accused Tilak Bhuiya entered into the land by crossing the border fencing who was carrying diesel engine power tiller with local khad for the purpose of pouring the same to his land. When BSF personnel asked him to unload the power tiller by making entry the khad then it was found that five bags of Phensedyl containing 1400 bottles of Phensedyl kept in a conceal manner. Then he was detained and seized those Phensedyl and power tiller and on further interrogation Tilak Bhuiya disclosed that one Md. Soleman S/o Late Mansur Ali of village Dighirpar, Malitola was involved with him for smuggling those Phensedyl.

On the basis of this complaint police started the case and IO did not investigate or break through the involvement and existence of another FIR named accused such as Md. Soleman S/o Late Monsur Ali. On the contrary IO has charge sheeted another person whose name is Hossain Ali. In entire case diary as well as CS there is no any whisper with regard to the another FIR named accused Md. Soleman.

It further reveals that nothing has been recovered from the accused Hossain Ali only IO has implicated the name of this petitioner as another accused and shown him absconding and prayed for W/A.

If that be the case then it clearly reveals that this petitioner Hossain Ali was not aware about the filing CS against him. Charge sheet did not whisper the existence of another FIR named accused. The name of the petitioner has been first disclosed from the mouth of arrested accused Tilak Bhuiya when he was in police custody. So it has no evidenciary value.

In view of above reason, I think petitioner Hossain Ali has been able to rebut the restriction imposed by u/s.37 of the NDPS Act. As such, I am inclined to allow his bail prayer.

Accordingly, accused Hossain Ali be enlarged on bail of Rs.4,000/- with two sureties of Rs.2,000/- each to the satisfaction of this court.

If on bail to **17.05.2023** for production, appearance and consideration of charge.

Spl.Judge(NDPS)

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