

06 16.4.2019

Skc/gd

CALCUTTA HIGH COURT
CIRCUIT BENCH OF
AT JALPAIGURI
APPELLATE SIDE

C.R.M. 99 of 2019

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 01/4/2019 in connection with Dinhata P.S. Case No.447 of 2018 dated 02/12/2018 under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Sabuj Ali and Another

....petitioners.

Mr. Sudip Guha

...for the petitioners.

Mr. Kallol Acharjee

Mr. Sourav Ganguly

...for the State.

The petitioners seek bail in connection with Dinhata P.S. Case No.447 of 2018 dated 02/12/2018 under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

It appears to be the fairly admitted position as evident from the case diary produced by the State that there were no independent witnesses at the time of the alleged seizure of commercial quantity of Phensedyl from the petitioners herein.

The State states that the petitioners were apprehended at the border by the BSF personnel and no independent witness would have been available there. According to the State, the BSF personnel have handed over the seized contraband to police

officials in the presence of the witnesses.

However, such handing over the contraband by the BSF to the police officials is not the act of seizure that is relevant to the petitioners. Since the fact of seizure may not be established in the absence of there being any independent witness in accordance with the provisions of the Act of 1985, the petitioners are entitled to be enlarged on bail.

Accordingly, the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only) each, with two sureties of like amount, to the satisfaction of the Chief Judicial Magistrate, Cooch Behar on the conditions that they shall not intimidate the witnesses or tamper with the evidence in any manner whatsoever and they shall appear before the trial court on every date of hearing.

In the event of violation of any of the conditions, the trial court will be at liberty to cancel the bail without reference to this Court.

The prayer for bail is allowed, subject to the conditions stated above.

Certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Sanjib Banerjee, J.)

(Suvra Ghosh, J.)