

CRM 4482 of 2021

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kotwali Police Station Case No.654 of 2020 dated 06-09-2020 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act.

- A n d -

In the matter of : Istarul Halsana

.... Petitioner.

Mr. Mayukh Mukherjee,
Mr. Sayan Mukherjee,
Mr. Sarthak Mondal

... For the Petitioner.

Mr. Sanjoy Bardhan,
Ms. Manisha Sharma

... For the State.

Commercial quantity of contraband items was recovered from the petitioner. The petitioner says that the requirements of Section 50 of the NDPS Act were not followed. The petitioner was not told that he had the option of being searched either in the presence of a Gazetted Officer or a Magistrate. He was only told that he could choose to be searched before a Gazetted Officer. This would vitiate the trial. Hence, the petitioner should be enlarged on bail.

We have considered the decision of the Hon'ble Supreme Court relied upon by the petitioner in the case of State of Punjab Vs. Baldev Singh, reported in (1999) 6 Supreme Court Cases 172.

We are of the opinion that whether or not there was due compliance of Section 50 of the NDPS Act, has to be decided by the learned trial Court on evidence. That is not an issue which we should decide in this application.

Section 37 of the NDPS Act imposes restrictions on grant of bail in cases involving more than commercial quantity of contraband.

Prima facie, we find from the material in the Case Diary that the petitioner was given the choice of being searched in the presence of a Gazetted Officer and he was, in fact, searched in the presence of a Gazetted Officer. The petitioner says that the Gazetted Officer was the Inspector-in-Charge of the concerned police station and was a member of the raiding team. Whether that was irregular or not, is also to be decided by the learned trial Court.

Prima facie, considering the material on record and keeping in view Section 37 of the NDPS Act, we are not inclined to allow the petitioner's prayer for bail.

The application for bail being CRM 4482 of 2021 is, thus, **dismissed**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(**Bivas Pattanayak, J.)**

(**Arijit Banerjee, J.)**