

SL. 16
March 25, 2021.
AKG

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

C.R.M. 196 of 2021

In Re : An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed on February 1, 2021 in connection with Sitalkuchi Police Station Case No. 102 of 2020 dated August 4, 2020 under sections 20 (b) (ii) (c) of the Narcotic Drugs Psychotropic Substance Act, 1985.

And

Allowed

In Re : Alimuddin Miah

... petitioner.

Ms. Suman Sehanabis Mandal,
Mr. T. Ghosh,
Ms. Arpita Saha

... for the petitioner.

Mr. Ujjwal Luksom,
Mr. Sourav Ganguly.

... for the State.

Learned counsel for the petitioner contends that, in the present case, there has been gross violation of Section 42 (1) of the NDPS Act, 1985 inasmuch as the seizure was done after sunset. That apart, it is argued that Section 100 (4) of the Code of Criminal Procedure stipulates that in such cases, if no local witness is available, witnesses from the neighbourhood have to sign as witnesses in the seizure list.

However, in the present case all the witnesses who signed the seizure list were part of the raiding party.

Learned counsel for the State opposes the prayer for anticipatory bail and submits that the second proviso to Section 42(1) empowers an officer to enter the premises even between

sunset and sunrise in certain cases. That apart, it is submitted that it has been clearly recorded in the *suo motu* complaint that no local witness was agreeable to sign the seizure list.

However, in the absence of any recording of the grounds of belief, as mandated in second proviso of Section 42 (1) of the NDPS Act, which is absent in the present case, there is apparent violation of Section 42 (1) in so far as the raid was conducted after sunset. That apart, the raiding officers had an option of getting people from the neighbourhood to act as witnesses, which option was not explored in the present case.

In such view of the matter, we are of the opinion that the petitioner ought to be granted the relief of anticipatory bail.

Accordingly, CRM 196 of 2021 is allowed, thereby granting anticipatory bail to the petitioner on condition that the petitioner shall meet the Investigating Officer once in a fortnight till the charge sheet is filed and shall comply with the conditions stipulated under Section 438 (2) of the Code of Criminal Procedure.

In the event of arrest, the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- with two sureties of like amount each, one of whom must be local.

(Sabyasachi Bhattacharyya, J.)

(Kausik Chanda, J.)