

30.09.2021
Court No.01
Item No. 34
Avijit Mitra

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

C.R.M. 1002 of 2021

In Re: An application for bail under Section 439 of the Code of Criminal Procedure;

And

In Re : **Ripan Paul**

....Petitioner

Mr. Biswarup Roy

... For the Petitioner

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.,

Mr. Sourav Ganguly

... For the State

The present application has been preferred in connection with New Jalpaiguri Police Station Case No.723 of 2021 dated 06.07.2021 under section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act).

Mr. Roy, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated in the present case. He is the proprietor of M/s. Jeeban Rekha Medical Hall situated under Bhaktinagar Police Station and on 5th July, 2021 at about 08.30 p.m. he was picked up by white uniform police personnel and was handed over to New Jalpaiguri Police Station and such fact would be explicit from the footage of CCTV camera installed at an adjacent shop, namely, K.D. Jewellers. However, as per memo of arrest, the petitioner was arrested on 6th July, 2021 at 8.50 hours at Tinbatti More which is under New Jalpaiguri Police Station but in the said arrest memo the column no.10 *[Signature of the witness (either a member family or a*

respectable person of the locality)] was blank. Absence of any signature in the column no.10 particularly when recovery from the petitioner was at a public place gives rise to a reasonable ground that the arrest of the petitioner may not have occurred in the manner as alleged by the prosecution. Signature on the arrest memo of a relation or a respectable member of the society is a requirement which stems from the mandate of the Hon'ble Apex Court in the case of *Shri D.K. Basu Vs. State of West Bengal* reported in *AIR 1997 SC 610*.

Mr. Roy submits that the application submitted by the petitioner for preserving the CCTV footage of the camera installed at K.D. Jewellers has not yet been disposed of by the learned Court below. A report was filed on behalf of the Officer-in-Charge, NJP Police Station before the learned Court below stating *inter alia* that “*for preserving the CCTV footage all the cameras of NJP P.S. could not be completed as because NJP P.S. has 70 CCTV cameras and due to heavy storage of Data, preservation of CCTV footage can only be preserved for 10 days.*”

He further submits that the petitioner is a person having a family consisting of his ailing parents, his wife and minor child. He is also running a medical shop and as such there is no likelihood that he would flee from justice. In the said conspectus, further detention of the petitioner, who is in custody for about 85 days, is not necessary. In support of the arguments advanced, Mr. Roy has placed reliance upon an order passed in *CRM 5708 of 2018 [Ansar Ali vs. State]*.

Mr. Ganguly, learned advocate appearing for the State however, opposes the petitioner's prayer and submits that the rigors of Section 37 of the NDPS Act are clearly attracted since contraband substance above commercial quantity has been recovered from the possession of the petitioner. In support of such contention he has drawn our attention to several documents in the case diary including the seizure list, arrest memo and the statement of witnesses, as recorded under Section 161 of the Code.

We have heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

In the complaint lodged by SI Gautam Mallick on 6th July, 2021 which was treated as the FIR, it has been categorically stated as follows :

"I, accordingly, seized the above noted articles under proper seizure list and label duly signed by the above noted witnesses, the accused person and the Gazetted Officer Shri Rajen Chettri, ACP, DD, SPC and acknowledged by the accused person. The labelling and seizure was made between 07:35 hrs to 08:45 hrs. Then, I arrested the above noted accused person after observing all guidelines of Apex court of arrest, as he violated the provisions of Narcotic Drugs by possessing huge quantity of contraband medicines without any valid authority, document or license."

It, thus, appears that seizure and arrest was at the same spot and at the same time but it is surprising to note that though the seizure was witnessed by local witnesses, namely, one Pappu

Sahani and one Nirmal Debnath and the seizure list was signed by them, column no.10 of the arrest memo was blank. This fact is patently absurd and inherently improbable. Arrest curtails freedom, brings humiliation and casts scars forever. Detention cannot be authorized in a routine and causal manner. The absence of signatures under column 10 of the arrest memo coupled with the contention of the petitioner that he was arrested on 5th July, 2021 *prima facie* reveal glaring lacunae in the prosecution case which erodes its root and in our opinion, the petitioner has been able to demonstrate with reasonable certainty that he is not guilty of the offence and he is not likely to commit any offence while on bail. In the backdrop of such sequence, it would not be appropriate to deny the petitioner's liberty, at this stage, in spite of the statutory restrictions under section 37 of the NDPS Act.

The petitioner has a family of ailing parents and minor child and runs a medical shop and *prima facie*, it appears that there is also no likelihood that he would flee from justice or would delay the investigation by abscondence.

In view thereof, we are of the opinion that further detention of the petitioner, who is in custody for about 85 days, is not warranted in the facts and circumstances of the case.

Accordingly, we allow this application and direct that the petitioner, namely, **Ripan Paul**, shall be released on bail upon furnishing a bond of Rs. 20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned

Judge, 2nd Special Court under NDPS Act, Jalpaiguri and on further condition that the petitioner shall not leave the jurisdiction of Bhaktinagar Police Station, save and except for meeting with the Investigating Officer of the case at New Jalpaiguri Police Station once a week on and from 4th October, 2021 until further orders.

The application for bail, being C.R.M. 1002 of 2021, is, thus, disposed of.

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

(Abhijit Gangopadhyay, J.)

(Tapabrata Chakraborty, J.)