

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

C.R.M. (NDPS) 25 OF 2022

**MORJEM MONDAL
VS.
THE STATE OF WEST BENGAL**

For the petitioner : Mr. Debarshi Brahma

For the State : Mr. Ranadeb Sengupta

Heard on : 31.01.2022

Judgment on : 31.01.2022

Court:

Petitioner seeks bail.

Learned advocate appearing for the petitioner draws the attention of the Court to the seizure list. He highlights the absence of independent witnesses in the seizure list. He relies upon CRM 907 of 2019 dated January 21, 2019 and submits that, since no independent witness was there at the time of the alleged recovery, the petitioner was held to overcome the restrictions under Section 37 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985. In similar vein he relies upon CRM 5799 of 2021 dated December 16,

2021. In the present case he submits that, the alleged recovery was made at Madhupur Ghat at 10.30 night without any independent witness.

Learned advocate appearing for the State relies upon a report dated January 30, 2021 of the Officer-in-Charge of the concerned police station. He submits that, Madhupur Ghat, given its location, is deserted at 10.30 P.M. He draws the attention of the Court to the contents in the First Information Report which provides explanations for the absence of independent witnesses.

When a petitioner is seeking bail in respect of an offence attracting the provisions of the NDPS Act, 1985, such petitioner is required to overcome the restrictions under Section 37 of the NDPS Act, 1985. In the present case, the petitioner seeks to overcome the restrictions on the strength of absence of independent witnesses at the time of the alleged recovery.

In CRM 907 of 2019 dated January 21, 2019, the Co-ordinate Bench considering the materials in the case diary and considering the fact that the recovery was made from a place

which was not in the custody of the petitioner noticing the absence of the independent witnesses held that the petitioner was able to overcome the restrictions under Section 37 of the NDPS Act, 1985. In such case, the time of recovery is not noted. In the present case, the recovery was made at 10.30 at night factual situations are different.

In CRM 5799 of 2021 dated December 16, 2021, the Co-ordinate Bench observed that, there was no independent witness in the arrest memo as well as in the seizure list. Again, the place of the seizure and the time of the seizure were not discussed in such order. Consequently we are unable to arrive at a finding that the factual situations are same as in the present case.

In the facts of the present case, the seizure was made at Madhupur Ghat at 10.30 p.m. in the night. There is a report of the concerned Officer-in-Charge stating that Madhupur Ghat is deserted at 10.30 P.M. with hardly any public coming and going from such place. There is a bamboo bridge at Madhupur Ghat which the public uses to come from 'Kalaberia' village. According to the Officer-in-Charge, the

‘Ghat Caretaker’ collects the fare from the public. Such ‘Ghat Caretaker’ stated before the officer in charge that after 6 P.M., there is hardly any public coming and going from such place.

Time and place at which the seizure was sought to be made are relevant for the purpose of considering the absence of independent witness. There may be other accentuating circumstances explaining the absence of independent witnesses also. Merely because there are no independent witness, it cannot be said with certitude that the petitioner was falsely implicated. Official status of the witnesses, ipso facto does not impinge upon the veracity of such witness or render them inadmissible as witness. In the facts of the present case, the prosecution is able to absence of prosecution witness. In such circumstances, we are of the view that since commercial quantity of narcotic was seized from the possession of the petitioner, he is unable to overcome the restrictions of Section 37 of the NDPS Act, 1985.

In view of the discussions above we are unable to grant bail to the petitioner as prayed for. CRM (NDPS) 25 of 2022 is rejected.

(Debangsu Basak,J.)

(Bibhas Ranjan De, J.)