

08.09.2022.
01.
Ct.No.28
as
(Rejected)

C.R.M. (NDPS) 953 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kaliachak P.S. Case No.568 of 2022 dated 27.06.2022 under Sections 21(c)/29 of the NDPS Act.

In the matter of : Madhab Mandal & Anr.

... Petitioners.

Mr. Sekhar Kumar Basu, ld. Sr. Adv.,
Mr. Arup Kr. Bhowmick.

...for the Petitioners.

Mr. Saibal Bapuli, ld. A.P.P.,
Mr. Bibaswan Bhattacharya.

...for the State.

Mr. Sekhar Kumar Basu, learned Senior Advocate for the petitioner submits there are gross irregularities in the seizure and arrest of the petitioners. Neither the seizure list prepared by BSF nor the re-seizure list at Gopalganj IC attached to Kaliachak Police Station bear the signatures of the petitioners. Re-seizure list shows the seized 174 bottles of phensedyl were re-seized at Gopalganj Investigation Centre at 16.35 to 17.35 hours but the forwarding report shows the accuseds along with the seized contraband were produced at Gopalganj IC at 18.15 hours. Hence, there are gross contradictions in the recovery of narcotic substance and petitioners may be enlarged on bail.

In view of the aforesaid submissions, affidavit was called for from the investigating officer. He has filed affidavit explaining the circumstances.

Learned Advocate for the State submits the original seizure list bears the signatures of the petitioners. Inadvertently the original was forwarded to the court and the copy was kept in the Case Diary. With regard to the re-seizure, it is contended that the contraband with the accused were initially brought before the Gopalganj Investigating Centre at 2.00 P.M. on 27th May, 2022. Due to technical errors, the police officers refused to accept the contraband. Upon correction of such errors, articles were again produced at 16.15 hours and re-seized. Subsequently, the petitioners were arrested and the complaint along with the arrested persons were forwarded to Kaliachak Police Station at 18.15 hours. Due to inadvertence 18.15 hours is quoted as the time of production of the seized contraband at Gopalganj I. C. in the forwarding report.

We have considered the materials on record. Original seizure list produced before the court bears the signatures of the petitioners. Statements of witnesses show petitioners were apprehended at the time of recovery. They were immediately medically examined. Subsequently, the contraband was produced before Gopalganj Investigating Centre attached to Kaliachak Police Station at 14.00 hours and thereafter at 16.15 hours when the articles were re-seized.

In view of the fact that the original seizure list bears signatures of the petitioners and documents show they were medically examined soon thereafter, lack of endorsement on the re-seizure list by the accused persons do not go to the root

of the prosecution case. Investigating Officer was not present at the time when the contrabands were produced at the Gopalganj I. C. ASI, Natabar Das re-seized the articles between 16.35 hours to 17.25 hours. Noting in the forwarding report by the investigating officer, therefore, not a product of his personal knowledge and appears to be an inadvertent error. Prosecution is entitled to lead evidence to prove the averments in the affidavit with regard to the re-seizure of the contraband between 16.35 hours to 17.25 hours at Gopalganj IC.

In view of the aforesaid materials on record and the quantity of narcotic substance seized i.e. 174 bottles of phensedyl which is above commercial quantity and in view of statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioners.

Accordingly, the prayer for bail of the petitioners is rejected.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)