

08.06.2022
03
Ct. No. 01
KAUSHIK
REJECTED

CALCUTTA HIGH COURT
IN THE CITCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION

C.R.M. (NDPS) 111 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Dinhata** Police Station Case No. **637** of **2021** dated 18.12.2021 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 25(1-A)/35 of the Arms Act.

And

In Re : Jhantu Haque

..... petitioner

Mr. Kunaljit Bhattacharjee
Mr. Alok Sah

....for the petitioner

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

....for the State

Petitioner prays for bail.

Learned advocate appearing for the petitioner submits that, the petitioner is in custody in excess of 177 days. The petitioner was falsely implicated. He refers to the seizure list and submits that seizure is said to take place at a market between 8.05 hours and 10.05 hours. The seizure was not witnessed by any independent person. He also refers to the arrest memo of the petitioner. He relies upon **(1997) 1 SCC 416 (D. K. Basu Vs. The State of West Bengal)** and an order of a Coordinate Bench dated December 16, 2021 passed in **CRM 5799 of 2021 (Sukesh Mondal @ Budesh)** in support of his contentions. He submits that, there are justifiable grounds

to doubt the alleged seizure of the materials concerned. He seeks bail on such ground.

Learned advocate appearing for the State draws the attention of the Court to the seizure list as also to the arrest memo. He submits that, no independent persons agreed to witness the seizure. The seizure was witnessed by two police personnel. So far as the arrest memo is concerned, one independent person witnessed it.

In *D. K. Basu (supra)*, the Supreme Court is of the following view:

“35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the

arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

In *D. K. Basu (supra)*, the Supreme Court required the police officer carrying out the arrest of the arrestee to prepare a memo of arrest at the time of arrest and such memo to be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. Such direction of the Supreme Court stands complied with in the facts and circumstances of

the present case. The arrest memo is witnessed by an independent person.

In Suresh Mondal @ Budesh (supra), the Coordinate Bench granted bail on the ground that there were no independent witness as in the arrest memo as well as in the seizure list.

In the facts and circumstances of the present case, there is an independent witness so far as the arrest memo is concerned.

Considering the fact that commercial quantity of narcotic was seized from the possession of the petitioner, we are of the view that the petitioner is unable to overcome the restrictions under Section 37 of the NDPS Act, 1985. Consequently, we are unable to grant bail to the petitioner.

In such circumstances, prayer for bail of the petitioner is rejected and the application being CRM (NDPS) 111 of 2022 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)