

11.03.2022
Court No.01
Item No.7
Saswata
(rejected)

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

CRM 721 of 2021

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Bhaktinagar Police Station Case No. 244 of 2019 dated 27/03/2019 under Sections 20(b)(ii)(c) of the NDPS Act, 1985.

And

In Re: **Rahaman Ali @ Abdul Rahaman**

Petitioner

Mr. Jaydeep Kanta Bhowmik
Miss Debi Sarkar

For the Petitioner

Mr. Nilay Chakraborty
Mr. Biswarup Roy

For the State

The instant bail application is at the behest of the petitioner in connection with Bhaktinagar Police Station Case No. 244 of 2019 under Sections 20(b)(ii)(c) of the NDPS Act, 1985.

At the time of moving the application for bail, a point was raised that the petitioner was below 18 years of age at the time of apprehension and, therefore, he cannot be tried as an adult before the Special Court.

The birth certificate issued by the Daspara Morning F.P. School, Uttar Dinajpur was produced before us and the same was directed to be handed over to Mr. Chakraborty, learned advocate appearing for the State in order to verify the genuinity and authenticity of the said certificate.

Today, a report is submitted by the Inspector-in-charge of Bhaktinagar Police Station, Siliguri Police Commissionerate. It is revealed therein that in 2016, there was a theft in the school by cutting lock ring and vital and important documents were stolen from the almirah and the FIR in this regard has already been lodged on 27/06/2016. The said officer further disclosed that the present teacher-in-charge of the said school has recently joined the said post and he could produce the register of the students attendance

between the period from 2007-2009 disclosing name of the petitioner but he could not disclose the date of birth of the petitioner.

In course of the hearing, Mr. Bhowmik, learned advocate for the petitioner submits that the application for ascertainment of the age of the petitioner was taken out before the Special Court which was subsequently rejected. Mr. Bhowmik further submits that subsequently, the birth certificate was traced out which could not be produced on the earlier occasion and, therefore, he may be given liberty to ventilate such grievance on the basis of a new document, obtained subsequently

Since, the instant case pertains to an offence under the NDPS Act and the commercial quantity of contraband was allegedly recovered from the joint possession of the petitioner and the trial has commenced but not a single witness has been examined as yet, we do not think that it is a fit case where we should take an exception to Section 37 of the NDPS Act.

In view of the above, the prayer for bail is *rejected*.

However, liberty is granted to the petitioner to make a fresh application on the basis of the new document found during the interregnum period between rejection of the first application and the filing of the instant application for bail and if such application is made, the learned Judge in the Special Court shall decide the same on the basis of the document so disclosed, in accordance with law.

The application for bail being CRM 721 of 2021 is accordingly dismissed.

(Harish Tandon, J)

(Rabindranath Samanta, J)