

06.07.2022.

Item No. 13

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*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE*

C.R.M. (NDPS) No. 199 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 01.07.2022 in connection with New Jalpaiguri Police Station Case No. 777 of 2018 dated 01.11.2018 under Sections 20(b)(ii)(c)/23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: **Tojjop Alam.** ...petitioner

Mr. Hillol Saha Podder,
Ms. Mousumi Das. ...For the petitioner

Mr. Aditi Shankar Chakraborty, Id. A.P.P.
Mr. Abhijit Sarkar.For the State

The application for bail is placed on the ground that there is violation of statutory mandate under Section 41(b)(1) of the Code of Criminal Procedure. Column 10 of the arrest memo is blank and the signatures of the respectable persons of the locality or relatives have not been obtained.

Counsel for the petitioner in his usual eloquence has placed a decision of a Co-ordinate Bench of this Court in the case of Ansar Ali – Vs. – The State of West Bengal dated 10th August, 2018 in C.R.M. No. 5708 of 2018. The said decision is on the issue raised by the petitioner that an infraction of 41B of the Code of Criminal Procedure throws a serious suspicion on the prosecution case itself.

The manner and nature of arrest of the person is vital and necessary to be in consonance with the said provisions since the co-relation between the arrest and seizure of the contraband is a vital limb of the case of the prosecution.

In the said Ansar Ali (supra) decision, the Co-ordinate Bench has relied upon a decision of the Hon'ble Supreme Court in the case of ***State of Maharashtra - Vs. - Vishwanath Maranna Shetty*** reported in ***(2012) 10 Supreme Court Cases 561***. The Ansar Ali decision (supra) has been followed by other Co-ordinate Benches of this Court in C.R.M. No. 1002 of 2021, C.R.M. (NDPS) No. 97 of 2022 and C.R.M. (NDPS) No. 133 of 2022.

The arguments as above advanced by the Counsel for the petitioner go to the root of the prosecution case and cannot be ignored or brushed aside. Indeed violation of any mandatory statutory provision, particularly in Penal Law, water down the prosecution case attracting claims for interim liberty. The case, however, must also be viewed from the prosecution's point of view. It is quite possible that there may be an omission on the part of the raiding party and the police officials, who arrested the petitioner.

This Court finds in the instant case that about 26 kilograms of Ganja are stated to have been seized from the possession of the petitioner. The contraband was

found hidden and concealed. The articles were seized after the contraband was smelt out.

Considering the fact that the petitioner is in custody for more than three years, this Court directs that the trial of the instant case should commence immediately and be completed mandatorily and positively within a period of six months from date. The prosecution witnesses shall be examined successively after cross-examination by the accused person.

It is made absolutely clear in the peculiar facts and circumstances of the case if the trial is not completed within six months from date, the petitioner shall be entitled to pray for bail.

The prayer for bail of the petitioner is rejected at this stage.

The Court notices many other instances of omission of this nature i.e. leaving column 10 of the arrest memo, being left blank by the police officers and Enforcement Officials, involved in raids, particularly in NDPS cases.

This Court has directed the Inspector General of Police, West Bengal and the Superintendent of Police, Jalpaiguri to immediately look into the matter and conduct necessary reorientation training and/or retraining classes for all officials involved in NDPS Enforcement. In case of repeated mistakes, suitable actions may be taken against such officials by the

Inspector General of Police, West Bengal, Commissioner of Police, West Bengal and the Superintendent of Police, Jalpaiguri.

A report shall be submitted to the Registrar General of the High Court at Calcutta of action taken in this regard within a period of four months from date.

The Registry shall send a copy of this order to the Inspector General of Police, West Bengal and the Superintendent of Police, Jalpaiguri forthwith.

The Office of the Public Prosecutor shall also communicate this order to the Inspector General of Police, West Bengal and the Superintendent of Police, Jalpaiguri.

C.R.M. (NDPS) No. 199 of 2022 is, thus, disposed of.

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

(Ananda Kumar Mukherjee, J.) (Rajasekhar Mantha, J.)