

15.09.2022

Item No.11

Ct.No.1

K.B/b.r.

Allowed

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Appellate Jurisdiction**

C.R.M.(NDPS) 285 of 2022

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure arising out of Kotwali P.S. Case No. 522 of 2022 dated 20.05.2022 under Section 21(c) of the NDPS Act.

And

In the matter of : **Osman Ali** ... Petitioner.

Mr. Jagriti Mishra
Mr. Sabir Ali
Mr. Subham Gupta

... for the petitioner

Mr. Arun Kumar Sarkar
Mr. Biswarup Roy

.....for the State.

This is an application for grant of bail in Kotwali P.S. Case No. 522 of 2022 dated 20th May, 2022 under Section 21(c) of the NDPS Act, 1985 corresponding to NDPS Case No. 49 of 2022 pending before the Learned Additional Sessions Judge, 1st Court, Cooch Behar (NDPS).

Learned Counsel for the petitioner draws the attention of the complaint wherein it is mentioned that the police

authority raids the place of occurrence at 22.30 hrs. and search for local witnesses but due to odd hours, independent witnesses were not found and subsequently the seizure was made on 20th May, 2022 in between 00.35 hrs. to 01.45 hrs in presence of two official witnesses but the seizure list shows that it is duly typed and printed but not the hand written.

Learned Counsel for the petitioner draws the attention of the seizure list and submits that whether the police had taken the printer as well as the computer with them for preparing the seizure list for the place of occurrence.

Learned Counsel for the petitioner submits that it is mandatory that the seizure is to be made in presence of the independent witnesses but there is no independent witnesses. Learned Counsel for the petitioner relied upon an unreported judgment passed in CRM (NDPS) 133 of 2022 dated 14th June, 2022 (Sankar Roy @ Sankar Ray & Ors.-vs- State of West Bengal & Ors.) and submits that in the similar circumstances and facts of the case the co-ordinate Bench of this Court has held that the petitioners overcome the restriction under Section 37 of the NDPS Act and accordingly bail was granted.

Learned Counsel for the petitioner submits that the petitioner is also on the same footing and the order passed by the Co-ordinate Bench is equally applicable in the case of the petitioner.

Per contra, learned Counsel for the State submits that search was conducted in accordance with law and accordingly seizure was made.

It is categorically mentioned by the complainant in the report that there is no independent witness at the odd hours and due to which the official witness were made as seizure witness in the seizure list.

Learned Counsel for the State further submits that the alleged narcotics were seized is of commercial quantity and there is bar for grant of bail to the petitioner under Section 37 of the NDPS Act.

Learned Counsel for the State further submits that on an earlier occasion the petitioner has preferred a bail application before the Co-Ordinate Bench of this Court and this Court after considering the materials on record had rejected the application on the ground of restriction under Section 37 of the NDPS Act.

Considered the rival submissions of the respective parties, Case Diary and materials on record.

Admittedly, the seizure was made at the midnight but it is shocking that the seizure list was prepared with the computer print out. It is also reveals that seizure list was prepared in the public place. It is inconvincible that the police had taken the computer and print at the place of occurrence. The judgment referred to by the prosecution wherein the Co-ordinate Bench of this Court had rejected the bail application has not considered the aspect with regard to the seizure made by the police at the place at the midnight which is computer printed and at the public place without the independent witnesses.

Accordingly, after going through both the orders passed by the Co-Ordinate Bench of this Court we find that the judgement passed by the Co-ordinate Bench in CRM (NDPS) 133 of 2022 dated 14.06.2022 (*supra*) is more applicable in the case of the petitioner

Accordingly, we are of the view that the petitioner is able to overcome the restriction under Section 37 of the NDPS Act.

Accordingly, the petitioner may find bail upon furnishing a bond of Rs.20,000/- (Rupees Twenty thousand only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 1st Court, Cooch Behar (under the Narcotic and Psychotropic Substance Act, 1985) subject to the petitioner shall appear before the Learned Trial Court on each and every date of hearing and shall meet with the Officer-in-Charge, Kotwali Police Station once in every week till the completion of the charge sheet

The application for bail, being **CRM (NDPS) 285 of 2022**, stands thus **allowed**.

All parties shall act on the server copy of this order, duly obtained from the official website of the Hon'ble High Court Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)