

01.11.2023
04
Court no. 8
mb/mns

***In the High Court at Calcutta
Appellate Side***

CRM (NDPS) 1774 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 25.10.2023 in connection with Krishnaganj Police Station Case No. 104 of 2023 dated 24.03.2023 under Sections 21(c) of the NDPS Act, 1985.

In the matter of : Abhijit Ghosh & Anr.

... Petitioners

Mr. Liton Maitra

...for the petitioners

Mr. P.K. Ganguly

.....for the State.

1. Learned counsel for the petitioners contends that the provisions of Section 41B of the Code of Criminal Procedure have been violated in the present case. It is submitted that whereas the arrest of the petitioners was allegedly done in a different place, the purported seizure was done in the police station, which vitiates the entire process of the seizure.
2. Secondly, it is contended that Section 41(2) of the NDPS Act has also been violated insofar as information was not sent to the superior officer within 72 hours as contemplated therein.
3. Learned counsel for the State vehemently opposes the prayer for bail and submits that within the

contemplation of Section 43 of the Code of Criminal Procedure, even an individual can arrest a person.

4. It is submitted that the present case is one of re-seizure by the police, once the petitioners were nabbed by the BSF (Border Security Force) at the relevant place.
5. Unfortunately, upon hearing learned counsel for the parties, we are unable to convince ourselves that the process of “re-seizure” is sanctioned by Indian Criminal Jurisprudence. The moment it is admitted that the petitioners were arrested elsewhere by a different instigating agency, that is, the BSF, the ‘re-seizure’ by the police, that too within the precincts of the police station, cannot attach the presumption contemplated under the NDPS Act to such process of re-seizure by the police. Hence, the rigours of the statute against the grant of bail cannot be attached to the present case.
6. The petitioners are already in custody for about 221 days and as the charge sheet has already been submitted, we do not find any further reason to incarcerate the petitioners.
7. Accordingly, CRM (NDPS) 1774 of 2023 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall furnish bond of Rs. 10,000/- (Rupees Ten Thousand) each, with two sureties of like amount each, one of whom must be local, to the

satisfaction of the learned Chief Judicial Magistrate, Krishnagar. The sureties may be common for both the petitioners. The petitioners shall not leave the territorial jurisdiction of the concerned police station during the entire period of trial and shall attend on each and every date of trial.

8. Moreover, the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the court or to any police officer or tamper with evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Chatterjee, J.)