

D/L. 13.
November 1, 2023
rp/gc

CRM (NDPS) 1784 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 26.10.2023 in connection with Barasat Police Station Case No. 402 of 2023 dated 26.05.2023 under Sections 20(b)(ii)(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Hasina Bibi

.... Petitioner

Mr. Sourav Mondal,
Mr. Mainak Ghosal

... for the Petitioner.

Md. Rafiqul Islam,
Mr. Shashanka Shekhar Saha

... for the State.

1. The petitioner has approached this Court on the ground that there are contraventions of the N.D.P.S. Act in the process of search and seizure. It is contended that admittedly the two purported independent witnesses were called upon by the investigating agency one hour before the alleged seizure.
2. That apart, the search and seizure did not take place before a Gazetted Officer which contravenes the provisions of Section 50 of the N.D.P.S. Act.
3. Learned Counsel for the State submits that the STF Inspector was the Officer in whose presence the search was carried out. That apart, there are no alleviating circumstances to mitigate the rigour of Section 37 of the N.D.P.S. Act.

4. Although the allegation that the two independent witnesses were called by the investigating agency immediately before the raid does not by itself vitiate the presumption under the N.D.P.S. Act, the fact that it was the STF Inspector who acted as the Gazetted Officer, despite being a part of the raiding agency, itself vitiates the process of search and seizure sufficient for making out a prima facie case for grant of bail.
5. Accordingly, CRM (NDPS) 1784 of 2023 is allowed, thereby granting bail to the petitioner on condition of furnishing bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Barasat.
6. Moreover, the petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial and 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 any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Chatterjee, J.)