

D/L. 22
January 31, 2023
MNS

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 1 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure fled on 02.01.2023 in connection with NDPS Case No. 49 of 2022 arising out of Birpara Police Station Case No. 74 of 2022 dated 18.04.2022 under Sections 21(c)/22(c)/25/27 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Krishna Gurung

.... Petitioner

Mr. Biswarup Roy

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Subhasish Mishra

... for the State

Learned counsel for the petitioner contends, by placing reliance on a co-ordinate bench judgment of this Court in the matter of Ansar Ali dated August 18, 2018, that the seizure is vitiated by non-compliance of Section 41(B) of the Code of Criminal Procedure. Column 10 of the memo of arrest, it is submitted, is blank, without any explanation for absence of signatures, although independent witnesses allegedly signed on the seizure list.

Heard learned counsel for the parties.

Learned counsel for the State opposes the prayer for bail.

However, considering the circumstance that the petitioner is in custody since April 18, 2022 and in view of the apparent non-compliance of the provisions of Section 41(B) of the Code of Criminal Procedure, the petitioner is entitled to the benefit of bail.

Accordingly, CRM (NDPS) 1 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court (under NDPS Act), at Jalpaiguri.

The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date.

The petitioner, further, shall not make any inducement, threat or promise to any person acquainted with the facts and circumstances 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.

CRM (NDPS) 1 of 2023 is disposed of accordingly.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)