

D/L. 26
January 31, 2023
MNS

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

CRM (NDPS) 4 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 02.01.2023 in connection with NDPS Case No. 48 of 2021 arising out of Alipurduar Jn. GRPS Case No. 4 of 2021 dated 29.07.2021 under Sections 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Pawan Baheti @ Bahati

.... Petitioner

Mr. Biswarup Roy

... for the petitioner

Mr. A. S. Chakraborty,
Mr. Saikat Chatterjee

... for the State

The petitioner has raised a question as regards the non-compliance of Section 41B of the Code of Criminal Procedure, inasmuch as Column 10 of the memo of arrest was not duly filled up.

Learned counsel for the State submits that the prayer for bail of the petitioner was rejected twice on previous occasions. It is further submitted that a huge commercial quantity of Ganja, which is a contraband article, was recovered from the custody of the petitioner.

As such, the prayer for bail is opposed.

Learned counsel for the petitioner, in reply, indicates that the non-compliance of Section 41B of the Code of Criminal Procedure was never taken as a ground on the previous occasions on refusal of bail.

Heard learned counsel for the parties, it transpires that the provision of Section 41B of the Code of Criminal procedure was indeed not complied with to the letter in the present case, inasmuch

as in the said Column, it was merely indicated that the relatives of the accused were intimated, which does not tantamount to substantial compliance of the provision.

Unfortunately, in most of the NDPS cases in this circuit, we are noticing that Column 10 of the memo of arrest is being left vacant, may be due to several reasons, but ultimately resulting in the petitioner getting bail almost by default. It is expected that the respondent authorities shall look into the same and shall try to redress the said malady as early as possible. In any event, in the present case, since the petitioner is entitled to the benefit of bail in view of non-compliance of Section 41B of the Code of Criminal Procedure, CRM (NDPS) 4 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes bond of Rs.50,000/-, 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) 4 of 2023 is disposed of.

A copy of this order be communicated at the earliest by the Registry of this Court to the Inspector General, North Bengal.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)