

D/L. 34
February 6, 2023
MNS

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

CRM (NDPS) 26 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 CR (NDPS) Case No. 17 of 2021 arising out of NCB Crime No. 06/NCB/KOL/2021 under Sections 18(b)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Iqbal Singh @ Bhola and another

.... Petitioners

Mr. Hillol Saha Podder

... for the petitioners

Mr. Sudipto Kumar Mazumdar

Mr. Sourab Das

... for the NCB.

Learned counsel for the petitioners submits that the petitioners are in custody for more than two years.

Learned Deputy Solicitor General appearing for the NCB seriously opposes the prayer for bail and contends that the presumption under Section 37 of the NDPS Act is squarely applicable in the present case.

It is contended by learned counsel for the petitioners that, when the petitioners were arrested, only cash was found on the person of the petitioners, but no contraband article was recovered from them and the contraband article was recovered from a different person, namely, one Nisha Bharati.

Learned counsel for the NCB, by placing reliance on a judgment in the case of *Union of India (NCB) Etc. Versus Khalil Uddin Etc.* [2022 *LiveLaw* (SC) 878], contends that the rigour of Section 37 of the NDPS

Act is applicable even in cases where the case was based on a statement under Section 67.

Upon a perusal of the said judgment cited on behalf of the NCB, we find that the facts of the said case were distinctly different from the present case, insofar as a quantity of opium has been found from the person of a different person than the present petitioners in the present case. In the reported case, however, the Supreme Court repeatedly took into consideration the fact that morphine weighing about 13 kgs. was found in a car.

That apart, there were sufficient incriminating circumstances against the petitioners in the said case, inasmuch as according to the prosecution in the case before the Supreme Court, the contraband article was found in a motor vehicle, which was driven by a co-accused and during the course of investigation it was found that the motor vehicle was recorded in the name of Md. Nizam Uddin, who had executed a sale letter and handed over the custody of the vehicle to the accused. That apart, the Supreme Court also places reliance on a statement made by the principal accused, who was taken in custody under Section 67.

In the present case, however, we do not find similar factual circumstances as indicated in the case before the Supreme Court. It is well-settled that even subtle distinction in facts, when a particular ratio is relied on, can create a hindrance in applicability of the said ratio to another case.

In such view of the matter and keeping in mind the considerable period already spent by the petitioners in the custody, CRM (NDPS) 26 of 2023 is allowed, thereby granting bail to the petitioners on condition that the petitioners furnish bond of Rs.10,000/- each, 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 Siliguri. The sureties may be common in respect of all the petitioners.

The petitioners 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 petitioners 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.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)