

D/L. 38 & 192
February 6, 2023
MNS

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

CRM (NDPS) 33 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.01.2023 in connection with CR (NDPS) Case No. 68 of 2022 arising out of Matigara Police Station Case No. 621 of 2022 dated 27.05.2022 under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Sola Khan

.... Petitioner

With

CRM (NDPS) 150 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 31.01.2023 in connection with CR (NDPS) Case No. 68 of 2022 arising out of Matigara Police Station Case No. 621 of 2022 dated 27.05.2022 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Ruksana Begum @ Begam

.... Petitioner

Mr. Hillol Saha Podder

... for the petitioner in CRM(NDPS) 33 of 2023.

Mr. Sourav Ganguly,
Mr. Biswarup Roy

...for the petitioner in CRM (NDPS) 150 of 2023.

Mr. Saikat Chatterjee,
Mr. Chattu Roy

... for the State in CRM(NDPS) 33 of 2023.

Mr. Nilay Chakraborty,
Ms. Namrata Das

... for the State in CRM(NDPS) 150 of 2023.

Learned counsel for the petitioner in both the matters, which were filed on behalf of two different co-accused persons on the same offences, is that the provisions of Section 41B of the Code of Criminal Procedure were not complied with. It is submitted that the witness, who signed the memo of arrest, was one of the members of the raiding party.

Learned counsel appearing for the State in both the matters vehemently opposes the prayer for bail and submits that the presumption of guilt under Section 37 of the NDPS Act is very much applicable to the present cases. It is contended that although there is similarity in name between the independent witness who signed the memo of arrest and one of the members of the raiding party, they are two different persons. That apart, it is submitted that the petitioners are only in custody from August, 2022.

Moreover, it is argued on behalf of the State that there was a joint recovery of contraband material from the co-accused persons and, as such, they stand on similar footing. Inasmuch as the petitioner in CRM (NDPS) 33 of 2023, namely, Sola Khan, is concerned, all provisions of Section 41B of the Code of Criminal Procedure were in any event complied with fully.

Heard learned counsel for the parties.

Keeping in view of the nature of allegations and the presumption under Section 37 of the NDPS Act and the fact that there was joint recovery from all the co-accused persons, we are not inclined to grant bail to the petitioners at the present juncture.

Accordingly, CRM (NDPS) 33 of 2023 is dismissed. CRM (NDPS) 150 of 2023 is also dismissed.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)