

D/L. 43
February 6, 2023
MNS

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

CRM (NDPS) 38 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 Sitalkuchi Police Station Case No. 92 of 2022 dated 23.04.2022 under Sections 20(b)(ii)(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Ramkrishna Sarkar and others

.... Petitioners

Mr. Subhasish Misra,
Mr. Swarup Das

... for the petitioners

Mr. Kallol Acharjee,
Mr. Aniruddha Biswas

... for the State

Learned counsel for the petitioners contends that the alleged contraband articles were recovered from the person of the petitioner no. 1. The petitioner nos. 2 and 3 are neighbours who, upon hearing the hue and cry raised at the time of arrest, came to the spot and were also arrested. It is submitted that the petitioners are in custody for about 288 days.

Learned counsel for the State controverts the submissions of the petitioners and opposes the prayer for bail. It is submitted that all the three petitioners were arrested together from the house of the petitioner no. 1, where the contraband articles were seized. As such, it is submitted that the presumption under Section 37 of the NDPS Act operates equally in respect of all the petitioners.

Heard learned counsel for the parties.

Inasmuch as petitioner no. 1 is concerned, since the contraband articles were recovered directly from the person of the

petitioner no. 1, we are not inclined to grant bail to the petitioner no. 1, particularly, in the teeth of Section 37 of the NDPS Act. However, in so far as the petitioner nos. 2 and 3 are concerned, their only alleged offence was that they were also present in the location.

As such, since there is scope of extending the benefit of doubt to the petitioner nos. 2 and 3, we are of the opinion that the presumption under Section 37 of the NDPS Act gets diluted inasmuch as petitioner nos. 2 and 3 are concerned.

Accordingly, CRM (NDPS) 38 of 2023 is disposed of, thereby refusing the prayer for bail made by the petitioner no. 1 (**Ramkrishna Sarkar**) and granting bail to the petitioner nos. 2 (**Biswanath Mandal**) and 3 (**Nitai Sarkar**) on condition that the petitioner nos. 2 and 3 furnish bonds 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 Cooch Behar.

As further condition of bail, the petitioner nos. 2 and 3 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 nos. 2 and 3, 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.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)