

D/L. 71
February 7, 2023
MNS

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

CRM (NDPS) 75 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 06.01.2023 in connection with N.D.P.S. Case No. 108 of 2021 arising out of Alipurduar Police Station Case No. 401 of 2021 dated 29.10.2021 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Sri Uttam Debnath

.... Petitioner

Mr. Kumar Shantanu

... for the petitioner

Mr. A. S. Chakraborty,
Mr. Arjun Chowdhury

... for the State.

Learned counsel for the petitioner submits that the provisions of Section 41B of the Code of Criminal Procedure have not been complied with in the present case and the petitioner is in custody for quite some time.

Learned counsel appearing for the State opposes the prayer for bail and contends that the provisions of Section 41B of the Code of Criminal Procedure were duly complied with in the present case and the CFSL report has been filed. As such, the prayer for bail ought to be refused.

Perused the case records in consonance with the allegation levelled against the petitioner, we find that the FIR specifically states that although the Arresting Officer looked for independent and disinterested witnesses, but no one turned up. However, in contradiction with the same, in the memo of arrest, the names of

purported independent witnesses are shown to have signed. Even apart from such discrepancy, we do not find the signature of any independent witness in the seizure list. As such, there is sufficient scope of doubt as to whether the provisions of Section 41B of the Code of Criminal Procedure were complied with in the present case. Hence, the rigour of Section 37 of the NDPS Act can be alleviated in the circumstances.

Hence, CRM (NDPS) 75 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 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.)