

D/L. 54
February 9, 2023
MNS

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 98 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 10.01.2023 in connection with New Jalpaiguri Police Station Case No. 1034 of 2021 dated 09.09.2021 under Section 20(b)(II)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Gour Das

.... Petitioner

Mr. Gobinda Saha,
Mr. Tamal Sen,
Mr. Milan Laskar,
Ms. Ria paul

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Aniruddha Biswas

... for the State.

Learned counsel for the petitioner argues that the provisions of Section 41B of the Code of Civil Procedure have been contravened in the present case inasmuch as no signature of independent witness appears on the memo of arrest. Although a similar prayer of the petitioner was rejected on August 1, 2022, the petitioner is, till now, in custody for about 518 days. Hence, it is argued that the petitioner may be enlarged on bail.

Learned counsel appearing for the State opposes the contentions of the petitioner and places reliance on the memo of arrest at page 6 of the Case Diary. It is submitted that there was substantial compliance of law in the process of arrest and seizure.

Upon perusal of the case diary, we are of the considered view that the provisions of Section 41B of the Code of Criminal Procedure were not

complied with, inasmuch as Column 10 of the memo of arrest is blank, that is, without the signature of any independent witness.

Keeping in view of such irregularity, coupled with the fact that the petitioner is already in custody for 518 days, we are inclined to grant bail to the petitioner.

Accordingly, CRM (NDPS) 98 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.)