

**07.06.2023**

Ct.No. 1  
Item No. 18  
Sb / Saswata  
**Rejected**

***CIRCUIT BENCH OF CALCUTTA HIGH COURT  
AT JALPAIGURI***

**C.R.M. (NDPS) 324 of 2023**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 24.04.2023 in connection with Alipur Duar PS case no. 367 of 2022 dated 21.07.2022 under Sections 21 (c)/25 of the NDPS Act, 1985.

And

In the matter of : **Subhankar Roy @ Body**

...petitioner

Mr. Sandip Guha Roy

...For the petitioner

Mr. Aditi Shankar Chakraborty, Ld.APP  
Mr. Sourav Ganguly

....For the State

This is an application for renewal of prayer for bail.

The earlier application for bail was rejected on 27<sup>th</sup>

February 2023 with the following observations:-

*“We have considered the materials on record. Statements of witnesses including contemporaneous document, i.e., seizure memo disclose recovery of narcotic substance, i.e., 98 bottles of cough syrup containing codeine phosphate, which is above commercial quantity from the petitioner. Petitioner was in the vehicle. He has control and custody over the contraband. Under such circumstances and in view of the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.”*

Learned counsel for the petitioner submits that on the earlier occasion, it was not brought to the notice of the

Coordinate Bench that seizure did not take place in presence of two independent witnesses and apparently, the said issue was required to be revisited. In this regard, reference was made to an order passed by the Coordinate Bench dated 17<sup>th</sup> October 2022 in CRM (NDPS) 340 of 2022. The earlier Bench, while rejecting the application for bail, had considered the statements of witnesses including contemporaneous documents.

It cannot be presumed that the Coordinate Bench had overlooked the nature and status of the witnesses, whose statements were recorded unlike the case of Suman Chakraborty. However, there are other materials supporting the recovery from the vehicle of the petitioner. In any event the impact and consequence of the statement of the witnesses must be assessed in the light of the statement of official witnesses during trial.

In such circumstances, we are not inclined to grant bail to the petitioner as there is no change in circumstances.

The application for bail is accordingly ***rejected.***

The observations howsoever worded in rejecting the prayer are prima facie and shall not influence the trial.

However, we are unhappy with the manner in which the investigating authority proceeded against the owner of the vehicle who is absconding for the last one year.

The status report does not show that any attempt has been made by the prosecution for proclamation and attachment against the owner of the vehicle. The Status report filed in Court is taken on record.

The Superintendent of Police, Alipur Duar is directed to look into this matter and ensure that the investigating officers take immediate steps in such cases where the offender is absconding.

The police authorities are directed to immediately move for proclamation and attachment following the procedure laid down in law and expedite the process of trial.

We request the Learned Trial Court to proceed with the trial as expeditiously as possible.

CRM (NDPS) 324 of 2023 is ***disposed of***.

***(Raja Basu Chowdhury, J.)***

***(Soumen Sen, J.)***