

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

18.08.2023
Court No.1
Item. 17
(Suvendu)

CRM(NDPS) 427 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with New Jalpaiguri Police Station Case No. 538 of 2022 dated 23.05.2022 under Sections 21(c)/ 22(c)/ 25/ 28/ 29 of the NDPS Act, 1985.

And

In the matter of: Kurban Faraji

.Petitioner.

Mr. Jaydeep Kanta Bhowmik
Ms. Jasmin Haque
Ms. Debi Sarkar

For the Petitioner.

Mr. Nilay Chakraborty
Mr. Aniruddha Biswas

For the State.

1. Admittedly, Column 10 of the Memorandum of Arrest has been signed by a S.I. of the raiding team. The name of the S.I. also appears in the F.I.R. This is the violation of Section 41B (b) of the Cr.P.C. which was inserted by the Act of 2009 to The Code of Criminal Procedure, 1975 but with effect from 01.11.2010 in pursuance of the guidelines of the Supreme Court in *D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416*.

2. Section 41B mandates signature of a family member of the arrestee or a respectable person of the locality from where the arrest is made.

3. Learned counsel appearing for the State opposes the prayer for bail.

4. We are hence of the view that the direct infraction of the statutory provisions and the guidelines given by the Supreme Court is sufficient to rebut the statutory restriction under Section 37 of the NDPS Act.

5. We also note that although the petitioner has been in custody from 23rd May, 2022, none of the 16 witnesses have been examined thus far.

6. The prayer for bail is hence allowed.

7. We accordingly direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand only) with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Additional Sessions Judge, Special Court (Under NDPS Act), 1st Court, Jalpaiguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall report to the I.O. of the concerned Police Station once every fortnight and shall not leave the local limits of the local police station without leave of the learned Special Court (Under NDPS Act), 1st Court, Jalpaiguri. The petitioner shall also make himself available for the trial as and when the petitioner is required.

8. CRM(NDPS) 427 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

