

29. 12.07.2023
Court
No.1 Tanmoy Ghosh

Allowed

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

CRM (NDPS) 430 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with **Kharibari Police Station Case No. 11 of 2023** dated **15.01.2023** under Sections **21(C)/22(c)** of the Narcotic Drugs and Psychotropic Substances Act, 1985. NDPS Case No. 04/2023.

And

In the matter of: - **Tapash Roy**

...petitioner.

Mr. Hillol Saha Poddder, Adv.

...for the petitioner.

Mr. Kallol Acharjee, Adv.,
Mr. Subhasish Mishra, Adv.

...for the State.

Admittedly, commercial quantity of contraband items was recovered from the possession of the petitioner. However, the petitioner says that the Memo. of Arrest is irregular. There is no signature of an independent person against column no.10 of the Memo. of Arrest. This is a mandatory requirement as pronounced by the Hon'ble Supreme Court in the case of **D.K. Basu Vs. State of West Bengal** reported in **AIR 1997 Supreme Court 610**. Section 41B of the Code of Criminal Procedure, 1973 also mandates that Memo. of Arrest shall be witnessed by an independent person. This is a gross illegality which entitles the petitioner to bail.

We have seen the material in the case diary including the Arrest Memo. Indeed, column no.10 is blank.

Accordingly, we are constrained to hold that the petitioner has been able to overcome the restriction under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. We, therefore, allow the petitioner's prayer for bail by also considering that charge-sheet has been filed after completion of investigation and that the petitioner is in custody since January, 2023.

Accordingly, we direct that the petitioner, namely, **Tapash Roy**, shall be released on bail upon furnishing a bond of Rs.20,000/- with two registered sureties of like amount each, to the satisfaction of the learned Judge, Special Court (under NDPS Act) Siliguri, on condition that the present accused/petitioner shall appear before the learned Trial Court on each date of substantive hearing and shall not leave the jurisdiction of the learned Trial Court unless such condition has been relaxed by the learned Trial Court.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.

Observations made in this order are tentative and only for the purpose of disposing of this bail application.

The application for bail being CRM (NDPS) 430 of 2023 is thus disposed of.

(Arijit Banerjee, J.)

(Partha Sarathi Sen, J.)