

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

**14.08.2023**  
Court No.1  
Item. 10  
(Suvendu)

**CRM(NDPS) 431 OF 2023**

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Kharibari Police Station Case No. 334 of 2022 dated 14.10.2022 under Sections 21(c)/ 22(c) of the NDPS Act, 1985.

And

In the matter of: Suman Barman

. . . . .Petitioner.

Mr. Hilll Saha Podder  
Ms. Mousumi Das

For the Petitioner.

Mr. Nilay Chakraborty  
Mr. Sourav Ganguly  
Mr. Biswarup Roy

For the State.

The petitioner has been in custody since 14<sup>th</sup> October, 2022. The Memorandum of Arrest reflects blank spaces against the signature of the witness. The Supreme Court in *D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416*, issued certain mandatory guidelines which were to be followed in all cases of arrest or detention as well as preventive measures. Of these directions, the Supreme Court also held that a Police Officer carrying out arrest shall prepare a Memorandum of Arrest at the time of arrest which shall be attested by at least one witness who may either be a member of the family of the arrestee or a responsible person from the locality from where the arrest is made. The decision in *D.K. Basu* was followed by a coordinate Bench in *CRM (NDPS) No. 428 of 2023* which has been placed before us.

We have also considered that seizure involves 25 bottles of cough syrup.

Having considered the relevant case including the Memorandum of Arrest and the judgment of the Supreme Court in *D.K. Basu*, we are of the view that the petitioner has been able to rebut the statutory restriction under Section 37 of the NDPS Act, 1985. The petitioner shall hence be released on bail.

The prayer for bail is allowed.

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 Judge, Special Court (Under NDPS Act), 2<sup>nd</sup> Court, Siliguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall also make himself available for the trial as and when the petitioner is required and shall also not leave the jurisdiction of the concerned police station without leave of the concerned authorities.

CRM(NDPS) 431 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

