

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
[CIRCUIT BENCH AT JALPAIGURI]

Present:

HON'BLE JUSTICE ARIJIT BANERJEE

AND

HON'BLE JUSTICE PARTHA SARATHI SEN

CRM(NDPS) No. 435 OF 2023
Chandra Bahadur Tamang @ Chandara B Tamang

Versus.

The State of West Bengal.

For the Petitioner : Ms. Madhushri Dutta, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP,
 Mr. Sourav Gangully, Adv.

Last heard on : 12.07.2023
Judgment on. : 27.07.2023

Partha Sarathi Sen, J:-

1. The instant case as arises out of an application under Section 439 of the Code of Criminal Procedure, 1973, is taken up for passing judgement.
2. In course of hearing, learned advocate for the accused-petitioner at the very outset draws our attention our attention to the memo of arrest in the name of the present accused-petitioner. It is contended by him that from the memo of arrest it would appear that column no.10 is blank and therefore a clear violation occurred with regard to the mandatory provision of Section 41 B of the Code of Criminal Procedure which makes

the alleged arrest of the present accused-petitioner in connection with the instant case very doubtful. Learned advocate for the accused-petitioner thus submits that the present accused-petitioner may be enlarged on bail on any condition whatsoever. In support of her contention learned advocate for the accused-petitioner placed reliance upon the following decisions:-

i. D.K Basu vs. State of West Bengal in Writ Petition (CRL) no. 592 of 1987; reported in (1997) 1SCC 416: 1997 SCC(Cri) 92: AIR 1997 SC 610;

ii. The order dated 10.08.2018 as passed in CRM 5708 of 2018 by a co-ordinate bench of this Hon'ble High Court;

3. Learned advocate for the State opposes the prayer for bail. Drawing attention to the seizure list it is contended by him that considering the fact that huge quantity of contraband articles was seized from the possession of the accused-petitioner the present application for bail may be rejected.
4. We have minutely perused the entire material as placed before us. We have gone through the reported/unreported decisions as cited from the Bar. We have given our anxious consideration to the submissions of the Learned Advocates for the contending parties.
5. On perusal of the reported decision of **D.K Basu (supra)** passed by the Hon'ble Supreme Court it appears to us that in the said decision the Hon'ble Supreme Court issued various directions which are mandatorily to be followed in all cases of arrest or detention till legal provisions are

made in that behalf, as preventive measures and out of the said direction the following direction of the Hon'ble Supreme Court is very much pertinent for us while disposing of the instant bail application and the same is reproduced hereinbelow:-

“.....
(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such arrest memo shall be attested by atleast one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.”

6. At this juncture if we look to the order dated 10.08.2018 passed in CRM 5708 of 2018 by a Co-ordinate Bench of this Court it appears that the said court dealing with the self same matter expressed the following view:-

“.....
Absence of signature in the arrest memo of a respectable member of the locality particularly when it is alleged that apprehension and recovery from the petitioner was at a public place in presence of independent witnesses gives rise to reasonable grounds that the arrest of the petitioner may not have occurred in the manner as alleged by the prosecution leading credence to the petitioner's plea of prior arrest and wrongful detention.”

7. On perusal of the entire materials in the case diary it appears to us that sufficient materials have been placed before us to prima facie show that huge quantity of contraband articles were seized from the possession of

the present accused-petitioner on 16.01.2021 at the P.O but on perusal of the memo of arrest dated 16.01.2021 in the name of the present accused-petitioner we find that the same has not been signed by either a member of the family of the present accused petitioner or by a respectable member of the locality where the arrest is made. We find from the case diary that column no.10 is absolutely blank and no explanation could be advanced from the side of the prosecution for non-compliance of Section 41B of the Code of Criminal Procedure.

8. In view of such infraction of statutory provision on the part of the prosecution and mandatory direction of the Hon'ble Supreme Court in the case of **D.K Basu (supra)** we are of the view that the present petitioner is successful in diluting the statutory restriction on grant of bail under Section 37 of the NDPS Act of 1985 and on an overall consideration of the facts and circumstances of this case, we are inclined to exercise our discretion under Section 439 of Cr.P.C in favour of the petitioner.
9. The case of **Superintendent, Narcotics Chennai vs. R. Paulsamy**, (supra) relied upon by learned Advocate for the State, is distinguishable on facts. In that case, the issue before the Hon'ble Supreme Court was whether or not non-compliance of the formalities mentioned in Sections 52 and 57 of the NDPS Act, 1985, dilutes the restriction on grant of bail enshrined in Section 37 of the Act. The Hon'ble Court held that the learned Single Judge should have take into account the factual

presumption in law that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely by saying that no document has been produced before the learned Single Judge at bail stage regarding the compliance with the formalities mentioned in Sections 52 and 57 of the NDPS Act. The effect of non-compliance with the requirements of Section 41B Cr.P.C. was not in issue in that case.

10. It is thus ordered that the present accused petitioner may find bail of Rs. 20,000/-with two registered sureties of like amount subject to satisfaction of learned Judge, Special Court (NDPS), 2nd Court, Siliguri in connection with CR(NDPS) case no.05 of 2021 arising out of Kharibari P.S Case no. 17 of 2021 dated 16.01.2021 on condition that the present accused-petitioner shall appear before the learned trial court on each date of substantive hearing and shall not intimidate and/or threaten the witnesses and/or tamper with evidence in any manner whatsoever, or commit similar offences in future with a further direction to appear before O/C Kharibari P.S once a week and shall not leave the territorial jurisdiction of trial court till conclusion of the CR(NDPS) 05 of 2021 unless such condition has been relaxed by the learned trial court.

11. With the aforementioned order the instant bail application being **CRM (NDPS) No. 435 OF 2023** is thus disposed of.

12. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

I Agree.

(Arijit Banerjee, J)

(Partha Sarathi Sen, J)