

14.08.2023
Court No.1
Item. 22
(sg)

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Matigara Police Station Case No. 1459 of 2021 dated 30.12.2021 under Section 21(c) of NDPS Act, 1985.

[illegible]

For the Petitioner.

For the State.

1. The petitioner has been in custody for 590 days.
2. The Memorandum of Arrest reflects blank spaces against the signature of the witness.
3. 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 Co-ordinate Bench in CRM(NDPS) 428 of 2023 which has been placed before us.

4. We have also considered that seizure involves 20 bottles of cough syrup.
5. Having considered the relevant facts of the 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.
6. The petitioner shall accordingly 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 NDPS 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.
7. The objection of learned counsel appearing for the State is noted.
8. CRM(NDPS) 459 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS,J.)

(MOUSHUMI BHATTACHARYA,J.)