

12.07.2023  
Item no.75  
Court No.1.  
AB  
(Allowed)

**Calcutta High Court  
In the Circuit Bench at Jalpaiguri**

**CRM (NDPS) No. 474 of 2023**

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Rajganj Police Station Case No.374 of 2022 Dated 25.06.22 under Section 21C/29 of the NDPS Act

And

**In the matter of : Jaffer Ali @ Jafhar Ali @ Jafar Ali**

**.....Petitioner.**

Mr. Arijit Ghosh,  
Ms. Swarnali Ghosh .....for the Petitioner.

Mr. A. S. Chakraborty, Id. APP,  
Mr. Sourav Ganguly .....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. Column no.10 of the Arrest Memo is signed by one police officer. This, in our considered view, is not sufficient compliance with the requirement of Section 41B of Cr.P.C. 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 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 has been signed by a police personnel.

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. We, therefore, allow the petitioner's prayer for bail also considering that charge-sheet has been filed after completion of investigation and that the petitioner is in custody for 372 days.

Accordingly, we direct that the petitioner, namely **Jaffer Ali @ Jafhar Ali @ Jafar Ali** 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 the NDPS Act at Jalpaiguri 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 is, accordingly, allowed.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

***(Partha Sarathi Sen, J.)***

***(Arijit Banerjee, J.)***