

12.07.2023
Item no.77
Court No.1.
AB
(Allowed)

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

CRM (NDPS) No. 478 of 2023

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Falakata Police Station Case No.640 of 2022 Dated 29.11.22 under Section 21C of the NDPS Act

And

**In the matter of : Siddique @ Siddik Hossain
@ Siddique Hossain**

.....Petitioner.

Mr. Kumar Shantanufor the Petitioner.

Mr. A. S. Chakraborty, Id. APP,
Mr. Arjun Chowdhuryfor 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 Cr.P.C. 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. 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 199 days.

Accordingly, we direct that the petitioner, namely **Siddique @ Siddik Hossain @ Siddique Hossain** shall be released on bail upon furnishing a bond of Rs.5,000/-, considering the financial distress of the present petitioner as stated by learned Advocate for the petitioner, 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.)