

F12.07.2023

Item no.85.

Court No.01.

b.r.

(Allowed)

Circuit Bench of Calcutta High Court
at Jalpaiguri

CRM (NDPS) No. 495 of 2023

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 27.06.2023 in connection with Matigara Police Station Case No. 1258 of 2021 dated 02.11.2021 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of : Md. Abu KalamPetitioner.

Mr. Sudip Guha,for the Petitioner.

Mr. Niloy Chakraborty,
Mr. K. Nag

.....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. 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 chargesheet has been filed after completion of investigation and that the petitioner is in custody since May 2022.

Accordingly, we direct that the petitioner, namely **Md. Abu Kalam** 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 NDPS Act, Siliguri 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.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)

(Arijit Banerjee, J.)

