

12.07.2023

Item no.91.

Court No.01.

b.r.

(Allowed)

Circuit Bench of Calcutta High Court
at Jalpaiguri

CRM (NDPS) No. 510 of 2023

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure filed on 04.07.2023 in connection with NDPS Case No. 33 of 2022 arising out of Kumargram Police Station Case No. 119 of 2022 dated 24.03.2022 under Sections 20 (b) (ii) (c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of : Bhoor Singh Gurjar Petitioner.

Mr. Sourav Ganguly
Ms. Supriya Debnath

.....for the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Arjun Chowdhury

.....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 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 of 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 **Bhoor Singh Gurjar** 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 Additional Sessions and Special Judge, 1st Court, Jalpaiguri (NDPS Act) 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.)

