

17.08.2023
Court No.1
Item. 05
(Suvendu)

CRM(NDPS) 528 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Bhaktinagar Police Station Case No. 448 of 2023 dated 04.06.2023 under Section 21(c) of the NDPS Act, 1985.

In the matter of: **Saraswati Biswas @ Soma Biswas**

...Petitioner.

For the Petitioner.

For the State.

1. Upon hearing learned counsel for the parties, it is undisputed that there is a violation of the provisions of The Code of Criminal Procedure, 1973 and the guidelines given by the Supreme Court in *D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416*.
2. Our view is buttressed by the Memorandum of Arrest which contains the name of a lady police officer in Column 10. The name of the same officer also appears in the FIR. There is no doubt that the name is of a lady officer since Column 10 also mentions “Lady Police L/C RG 1584”.
3. Learned counsel appearing for the State opposes the prayer for bail and submits that the I.O. was under a mistaken believe at the relevant point of time that a lady police officer should sign the Memorandum of Arrest in case of a team raiding a lady. Counsel

submits that a videography of the raid was taken and there is no further infraction of the provisions of the NDPS Act, 1985.

4. Section 41B of the CR.P.C. deals with procedure of arrest and duties of an officer making arrest and casts an obligation on every police officer while making an arrest to ensure certain safeguards. Section 41B (b) sets out the mandatory obligation with regard to preparation of a Memorandum of Arrest which shall include under Clause (i) that the concerned police officer shall prepare a Memorandum of Arrest which shall be attested by at least one witness who may either be a member of the family of the person arrested or a respectable person of the locality where the arrest is made.

5. Section 60A of the CR.P.C. further mandates that no arrest shall be made except in accordance with the provisions of the Cr.P.C. or any other law for the time being in force providing for arrest. The law for the time being in force under Section 60A of the Cr.P.C. would certainly include the decision of the Supreme Court in *D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416*, wherein paragraph 35 of the Report, the Supreme Court issued requirements which were to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures.

6. Sub-paragraph (2) of Paragraph 35 lays down that the police officer carrying out the 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 respectable person of the locality where the arrest is made.

7. There is no doubt that the guidelines issued by the Supreme Court was incorporated into the Cr.P.C. in the form of Section 41B by the Act of 2009 with effect from 01.11.2010.

8. The defense of the I.O. being ignorant of law is of no defense at all. The law is also settled in this regard.

9. The above reasons persuade us to hold that the infraction is sufficient to rebut the statutory restrictions under Section 37 of the NDPS Act, 1985. The prayer for bail is hence allowed.

10. We accordingly direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 20,000/- (Rupees twenty thousand only) with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Special Judge, Special Court (Under NDPS Act), 1st Court, Jalpaiguri. 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.

11. CRM(NDPS) 528 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

