

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

14.08.2023
Court No.1
Item. 29
(Suvendu)

CRM(NDPS) 535 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Bagdogra Police Station Case No. 524 of 2021 dated 02.11.2021 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of: Md. Washim Sk. & Ors.

.Petitioners.

Mr. Biswarup Roy

For the Petitioners.

Mr. Aditi Shankar Chakraborty
Mr. Nilay Chakraborty
Mr. Kallol Nag

For the State.

The petitioners have been in custody for a considerable period of time. The Memorandum of Arrest reflects blank spaces against the signature of the witness. The Supreme Court in *D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416*, issued certain mandatory guidelines which were to be followed in all cases of arrest or detention as well as preventive measures. Of these directions, the Supreme Court also held that a Police Officer carrying out 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 responsible person from the locality from where the arrest is made. The decision in *D.K. Basu* was followed by a coordinate Bench in *CRM (NDPS) No. 428 of 2023* which has been placed before us.

We have also considered that seizure involves 263 grams of Brown Sugar.

Having considered the relevant case including the Memorandum of Arrest and the judgment of the Supreme Court in *D.K. Basu*, we are of the view that the petitioners have been able to rebut the statutory restriction under Section 37 of the NDPS Act, 1985. The petitioners shall hence be released on bail.

The prayer for bail is allowed.

We accordingly direct that the petitioners shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand only) each with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Judge, Special Court (Under NDPS Act), 2nd Court, Siliguri. The petitioners shall not induce witnesses or influence them or tamper with the evidence. The petitioners shall also make themselves available for the trial as and when the petitioners are required and shall also not leave the jurisdiction of the concerned police station without leave of the concerned authorities.

CRM(NDPS) 535 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

