

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

16.08.2023
Court No.1
Item. 19
(Suvendu)

CRM(NDPS) 547 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with New Jalpaiguri Police Station Case No. 1184/2021 dated 01.11.2021 under Sections 21(c)/ 22 (c) / 25/29 of the NDPS Act, 1985.

And

In the matter of: Ajid Miya

.Petitioner.

Mr. Hillol Saha Podder
Ms. Mousumi Das

For the Petitioner.

Mr. Kallol Acharjee
Mr. Aniruddha Biswas

For the State.

1. The petitioner has been in custody for one year and eight months.
2. There is admittedly non-compliance of Section 41B of the Cr.P.C. Column 10 of the Memorandum of Arrest is blank.
3. Although earned counsel appearing for the State opposes the prayer for bail but he does not have any explanation for the non-naming of an independent witness or any family member as mandated under Section 41 B of the Cr.P.C. at the time of arrest.
4. Considering the undisputed facts of the instant case and a coordinate Bench judgment dated 27th July, 2023 in CRM(NDPS) 435 of 2023 which on similar facts allowed the prayer for bail relying upon a Supreme Court judgment passed in *D.K. Basu Vs. State of West Bengal*, (1997) 1 SCC 416, we are of the view that the petitioner

has been able to rebut the statutory restriction under Section 37 of the NDPS Act.

5. The prayer for bail is hence allowed.

6. We accordingly direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten 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.

7. CRM(NDPS) 547 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)