

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

16.08.2023
Court No.1
Item. 20
(Suvendu)

CRM(NDPS) 548 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with S.I's Seizure List No. 02/21-22 dated 25.07.2021 lodged by Officer-in-charge of Excise Alipurduar Range Preventive Unit, Alipurduar under Sections 21(c) of the NDPS Act, 1985.

And

In the matter of: Dinu Biswas

.Petitioner.

Mr. Biswarup Roy

For the Petitioner.

Mr. Tapan Bhattacharjee
Mr. Chattu Roy

For the State.

1. The petitioner has been in custody for over two years.
2. Admittedly, Column 10 of the Memorandum of Arrest has been signed by the Excise Constable who was a member of the raiding team.
3. Learned counsel appearing for the State submits that he does not have any explanation for this admitted infraction of law, namely Section 41 B of the Cr.P.C.
4. We have been shown a coordinate Bench judgment of 27th July, 2023 in CRM(NDPS) 428 of 2023 where a lady constable had put her signature in Column 10 of the Memorandum of Arrest. The coordinate Bench had allowed the prayer for bail on holding that the facts were sufficient to rebut the statutory restriction under Section 37 of the NDPS Act.

5. Since the facts before us are very similar, we are also of the view that the petitioner has been able to rebut the statutory restriction under Section 37 of the NDPS Act.

6. We have also perused the judgment of the Supreme Court passed in *D.K. Basu Vs. State of West Bengal*, (1997) 1 SCC 416, which laid down certain guidelines for arrest.

7. The prayer for bail is hence allowed.

8. 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 Additional Sessions Judge and Special Judge, 2nd Court (Under NDPS Act), 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.

9. CRM(NDPS) 548 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

