

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

17.08.2023
Court No.1
Item. 14
(sg/cm)

CRM(NDPS) 563 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Kotwali Police Station Case No. 409 of 2022 dated 25.06.2022 under Sections 20(b)(ii)(c)/25/29 of the NDPS Act, 1985.

And

In the matter of: TAPAN PAUL

.Petitioner.

Mr. Kumar Shantanu

For the Petitioner.

Mr. Kallol Acharya
Mr. Chattu Roy

For the State.

1. It is submitted on behalf of the accused petitioner that there is a discrepancy in the matter of arrest. Our attention is drawn that in the F.I.R., it is stated that there is hardship in arranging the availability of the learned Executive Magistrate and Gazetted Officer as at that time they were not available. So, Memo of Arrest is shown in respect of the accused petitioner on 25.06.2022 at 9.55 p.m. So, as per the submission of the learned Advocate that there is a total discrepancy in the matter of arrest and admitted delay and on this score, the bail petition filed by the accused petitioner may be granted.
2. Learned counsel appearing for the State submits that it is the clear admission of the concerned I.O. of this case that on the relevant point of time of arrest, as the Executive Magistrate or Gazetted Officer was not

available, in the Memo of Arrest of 25.06.2022, the time is shown at 12.30 for arrest of the accused petitioner. Learned counsel is also not in a position to explain the delay or time gap shown in the F.I.R. as well as the Memo of Arrest.

3. We have considered the rival submissions advanced by both the parties and also perused the materials placed before us at the time of hearing, particularly, the written complaint as well as the Memo of Arrest. It appears that there is a clear discrepancy and delay in the matter of arrest of the accused petitioner. From the written complaint, it appears that the date of arrest is 24th June, 2022 at 9.55 p.m. whereas from the Memo of Arrest it reflects that the Memo of Arrest was on 25.06.2022 at 12.30 hrs.
4. Considering the above discrepancy and the other materials placed before us, we are inclined to enlarge the accused petitioner on bail.
5. Accordingly, the accused petitioner, i.e., Tapan Paul, 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 whom must be local, to the satisfaction of the Learned Court where the case is pending. It is further directed that the accused petitioner shall not induce any charge-sheeted witnesses or influence them or tamper with the evidence. The petitioner shall also make himself available before the Trial Court on each and every date of hearing. It is further directed that if any of the conditions is not complied with without any justifiable reasons, the Trial Court shall be at liberty to cancel the bail order without further reference to this Court.

6. CRM(NDPS) 563 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS,J.)

(MOUSHUMI BHATTACHARYA,J.)