

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

17.08.2023
Court No.1
Item. 15
(sg/cm)

CRM(NDPS) 567 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Matigara Police Station Case No. 1258 of 2021 dated 02.11.2021 under Sections 21 (c) of the Narcotic Drugs and Psychotropic Substances Act and corresponding to C.R. (NDPS) Case No. 159 of 2021.

And

In the matter of: Md. Alam @ Dilip

.Petitioner.

Mr. Sudip Guha

For the Petitioner.

Mr. Ujjwal Luksom
Ms. Namrata Das

For the State.

1. Admittedly, the petitioner before us stands on a similar footing with one other co-accused person who was released on bail by a Co-ordinate Bench by its order dated 12th July, 2023. The reason for enlarging the co-accused on bail is the same reason which has been brought before us, namely, that there is no signature of an independent witness in Column 10 of the Memorandum of Arrest.
2. As held in *D.K. Basu vs. State of West Bengal* in AIR (1997) 1 SCC 416, the signature of an independent witness must be there in the Memo of arrest. This is also the mandate of Section 41B of the Cr.P.C.
3. Learned counsel appearing for the prosecution admits that Column 10 is, indeed, blank.

4. We are accordingly of the view that the petitioner has been able to rebut statutory restriction under Section 37 of the NDPS Act.
5. We accordingly grant prayer for bail.
6. The petitioner shall accordingly 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 Judge, Special Court under NDPS Act, Siliguri. 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) 567 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS,J.)

(MOUSHUMI BHATTACHARYA,J.)