

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

18.08.2023
Court No.1
(D/L 10)
(AK)

CRM (NDPS) 579 OF 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 10.08.2023 in connection with New Jalpaiguri Police Station Case No.759 of 2022 dated 15.07.2022 under Sections 20(b)(ii)(c)/23(c) of the N.D.P.S. Act, 1985.

And

In the matter of: **Joy Sarkar @ Pradip Sarkar**

... Petitioner.

Mr. Hillol Saha Podder

... for the petitioner.

Mr. Nilay Chakraborty
Mr. Kallol Nag

... for the State.

The Memorandum of Arrest indicates a blank space against serial no.10 which should have carried the signature of an independent witness. This is as per the mandate of Section 41B of the Code of Criminal Procedure following the guidelines laid down by the Supreme Court in *D.K. Basu vs. State of W.B.* reported at (1997) 1 SCC 416.

Learned counsel appearing for the State does not have any explanation to the admitted statutory infraction.

We are, hence, of the view that the above infraction is sufficient to rebut the statutory restriction under Section 37 of the NDPS Act, 1985.

We are hence inclined to grant the prayer for bail.

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 each of like amount, one of who must be local and to the satisfaction of the learned Judge, Special Court (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.

C.R.M.(NDPS) 579 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)