

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

23.08.2023
Court No.1
(D/L 12)
(AK)

CRM (NDPS) 600 OF 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 11.08.2023 in connection with Pradhannagar Police Station Case No.916 of 2021 dated 14.11.2021 under Sections 21(c)/22(c) of N.D.P.S. Act, 1985.

And

In the matter of: **Nabin Ray @ Roy**

... Petitioner.

Mr. Jaydeep Kanta Bhowmik
Mr. Sayantan Bhowmik
Ms. Rikta Sarkar

... for the petitioner.

Mr. Kallol Acharjee
Mr. Sagnik Sankar Sikdar

... for the State.

The petitioner renews his prayer for bail. The earlier order of rejection is of 31st August, 2022.

Learned counsel appearing for the petitioner, however, submits that the point with regard to column 10 of the Memorandum of Arrest containing a blank space was not taken before the coordinate Bench.

We find that there is no signature of an independent witness in column 10 of the Memorandum of Arrest. This is in contravention of Section 41B of the CrPC which casts certain obligations on the police officer at the time of arrest. Section 41B was inserted in the CrPC by the Act of 2009 with effect from 1.11.2010 pursuant to the judgment

of the Supreme Court in *D.K. Basu vs. State of W.B.* reported at (1997) 1 SCC 416.

There are several orders which have allowed in prayer for bail on the statutory infraction of Section 41B of the CrPC which also mandates that arrests have to be made as provided under the Code – reference Section 60A of the CrPC.

We are hence of the view that the petitioner has been able to rebut the statutory restriction under Section 37 of the NDPS Act.

The prosecution shall, however, note the import of the two cases reported (2011) 3 SCC 531 and (2020) 2 SCC 563.

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 Additional District Judge, 2nd Court, 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.

C.R.M.(NDPS) 600 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)