

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

30.08.2023
Court No.01
rpan / **24**

CRM (NDPS) 610 of 2023

In Re: Pawan Biswas

- Petitioner

Mr. Sudip Kumar Paul
... for the Petitioner.
Mr. Nilay Chakraborty,
Mr. Arjun Chowdhury
... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Bagdogra Police Station Case No.175 of 2022 dated 04.04.2022 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Paul, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated in the present case. He is a resident of Matigara. He and his mother were arrested from Bihar More Bus stoppage which is about five kilometers from their residence falsely alleging that were coming from Chopra. The petitioner was arrested on 4th April, 2022 at 19.40 hours after the seizure was conducted on the same date. However, in the memo of arrest in column 10 *[Signature of the witness (either a member family or a respectable person of the locality)]* was blank. Absence of any signature in column 10 when recovery from the petitioner was at a public place gives rise to a reasonable ground that arrest of the petitioner may not have occurred in the manner as

alleged by the prosecution. Signature on the arrest memo of a relation or a respectable member of the society is a requirement which stems from the mandate of the Hon'ble Apex Court in the case of *D. K. Basu Vs. State of West Bengal*, reported in *AIR 1997 SC 610*.

Mr. Paul further argues that the petitioner is languishing in custody for more than 513 days. There are 12 witnesses and not a single witness has been examined till date and as such, there is no possibility towards conclusion of the trial in the near future.

He further submits that the petitioner was only about 18 years of age at the time of arrest. He has a family and as such, there is no possibility that he would flee from justice.

Mr. Chakraborty, learned advocate appearing for the State, however, opposes the petitioner's prayer and submits that as contraband substance above commercial quantity was recovered from the possession of the petitioner and his mother, the statutory restrictions are clearly attracted and that there is no reasonable ground for believing that he is not guilty of such offence and that he is not likely to commit offence while on bail.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

It appears that the seizure and arrest was on the same spot and at about the same time but it is surprising to note

that though the seizure was witnessed by the local witnesses, namely, Barun Roy and Kundan Kumar but Column No.10 of the arrest memo was blank. This fact is patently absurd and inherently improbable. Detention cannot be authorized in a routine and casual manner. The absence of signatures under column 10 of the arrest memo coupled with the contention of the petitioner that he was arrested on 4th April, 2022 *prima facie* reveal glaring lacunae in the prosecution case which erodes its root and in our opinion, the petitioner has been able to demonstrate with reasonable certainty that he is not guilty of the offence and he is not likely to commit any offence while on bail. In the backdrop of such sequence, it would not be appropriate to deny the petitioner's liberty, at this stage, in spite of the statutory restrictions under section 37 of the NDPS Act.

Furthermore, for a period of about one year not a single witness has been examined. Such delay itself creates a presumptive proof of prejudice. The petitioner has a family and *prima facie* it appears that there is also no likelihood that he would flee from justice or delay the trial by abscondence.

In view thereof, we are of the opinion that further detention of the petitioner, who is in custody for 513 days, is not necessary.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local,

to the satisfaction of the concerned learned Judge, Special Court (NDPS Act), 2nd Court, Siliguri with a further condition that he shall not leave the jurisdiction of Matigara Police Station, save and except for attending the learned trial court below on all the dates as specified for hearing. He shall meet with the Inspector-in-Charge, Matigara Police Station once a week until further orders.

It is further directed that the petitioner shall not intimidate the witnesses or tamper with the evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

The application for bail being CRM (NDPS) 610 of 2023 is, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Lapita Banerji, J.)

(Tapabrata Chakraborty, J.)