

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

25.08.2023
Court No.1
(D/L 11)
(AK)

CRM (NDPS) 611 OF 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 14.08.2023 in connection with New Jalpaiguri Police Station Case No.538 of 2022 dated 23.05.2022 under Sections 21(c)/22(c)/25/28/29 of the N.D.P.S. Act, 1985.

And

In the matter of: **Mahasen Sk.**

... Petitioner.

Mr. Hillol Saha Podder

... for the petitioner.

Mr. Nilay Chakraborty
Mr. Subhasish Misra

... for the State.

The petitioner has been in custody for about one year three months.

The co-accused was granted bail by an order dated 18th August, 2023.

We find that the petitioner is similarly circumstanced as column 10 of the Memorandum of Arrest was signed by the Sub-Inspector of the raiding team. The name of the SI also appears in the FIR. There is, hence, a violation of Section 41B(b) of the CrPC which was inserted in the Act in 2009 but 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.

Section 41B(b) of the CrPC requires the signature of a family member of the arrestee or a respectable person of the locality from where the arrest is made.

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

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 Special Judge, Special Court (NDPS Act, 1985), 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) 611 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)