

JPD-08
Ct No.01
18.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRM (NDPS) 613 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 14.08.2023 in connection with Jaigaon Police Station Case No. 100 of 2023 dated 17.04.2023 under Section 22(c) of the NDPS Act, 1985.

And

In the matter of: Purni Tamang @ Lama

.... petitioner

Mr. Arnab Saha

... for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas

... for the State

1. Learned counsel for the petitioner contends that there was gross violation of Section 46 of the Code of Criminal Procedure and Section 51A of the NDPS Act insofar as search was carried out by male persons.
2. It is contended further that there was no Executive Magistrate present at the spot, which also vitiates the seizure and the arrest. That apart, it is argued that the petitioner is already in custody for 150 days and no copy of charge-sheet has been handed over to the petitioner.
3. Learned counsel for the State vehemently opposes the prayer for bail and submits that it is evident from the documents annexed to the petition itself that two witnesses, who were present at the time

of search and seizure, as well as the two members of the raiding party, were all females. Hence, there is no scope of contravention of the provisions as alleged by the petitioner. That apart, the signature of the Executive Magistrate appears duly in the concerned document. Hence, if any doubt is sought to be raised by the petitioner on such score, the same could only be the subject-matter of trial.

4. Upon consideration of the documents on record, we are convinced that the petitioner is unable to make out a *prima facie* case sufficient to dispel the restriction under Section 37 of the NDPS Act, since there were two female members in the raiding party as well as two of the witnesses were females.
5. That apart, a presumption of correctness is attached to official acts, unless rebutted in trial. Hence, In view of the signature of the Executive Magistrate appearing in the relevant papers, at this juncture it would be premature to hold that the seizure was vitiated.
6. Hence, CRM (NDPS) 613 of 2023 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)