

AD-11
Ct No.01
Jalpaiguri
18.09.2023
B.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 672 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 22.08.2023 in connection with NPDS Case No.02 of 2023 arising out of Pradhan Nagar Police Station Case No. 23 of 2023 dated 08.01.2023 under Sections 21(C)/22(C)/27A of the NDPS Act, 1985.

And

In the matter of: **KASHIF MAHFUZ SHAIKH AND ANR**

...Petitioners

Mr. Gobinda Ghosh,

... for the petitioners

Mr. Abhijit Sarkar,
Mr. Biswarup Roy

... for the State

1. Learned counsel for the petitioners argues that there are several mitigating circumstances and the contravention of Section 41B. It is argued that in the complaint leading to the FIR itself, it appears that two allegedly independent witnesses were called from Siliguri Junction on the way to Tenzing Norgay Bus Terminal, where the recovery was made.
2. That apart, one Debendra Singh signed the Memo of Arrest in Column 10, who is neither a member of the family of the petitioner nor a respectable person of the locality, hailing

from elsewhere as evident from the seizure list, in which the said Debendra Singh is a witness as well.

3. Learned counsel for the State opposes the prayer for bail and submits that Siliguri Junction is in the close vicinity of the Tenzing Norgay Bus Terminal and nothing in the complaint vitiates the same. In so far as Debendra Singh is concerned, it is argued that there is no bar in such a witness finding place in column 10 of the Memo of Arrest. That apart, it is argued that such contention is to be dealt with in trial and not at this stage.
4. We find from the materials annexed to the bail application that two witnesses were called from the Siliguri Junction area on way to Tenzing Norgay Bus Terminal where the recovery was made. In view of the proximity of the two places and the fact that the independent witnesses were called on way to the seizure, we do not find anything mitigating to vitiate the Memo of Arrest or seizure itself by virtue of such fact.
5. In as much as the independent witness Debendra Singh being originally from a different locality, such fact per se also does not vitiate the arrest, since there could have been several circumstances under which the said Debendra Singh was present at the spot or be currently a resident of the locality, since Tenzing Norgay Bus Terminal is a fairly populated place and is used by the locals for transport. In any event, it would be premature to go into such issues at this stage but are best kept open to be argued in trial.

6. Keeping in view that the petitioners are only in custody for eight months till date, we are not inclined to grant bail, more so in view of the restriction under Section 37 of the NDPS Act.
7. Accordingly, CRM (NDPS) 672 of 2023 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)