

JPD-36
Ct No.01
13.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 681 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 29.08.2023 in connection with New Jalpaiguri Police Station Case No. 240 of 2022 dated 13.03.2022 under Sections 18/21(c)/22(c)/27A/28/29 of the NDPS Act.

And

In the matter of: Sher Bahadur Tamang and others

.... petitioners

Mr. Biswarup Roy

... for the petitioners

Mr. Nilay Chakraborty,
Mr. Dhiman Sil

... for the State

1. Learned counsel for the petitioners points out certain apparent defects in the process of arrest and seizure. It is contended that the provisions of Section 50 of the NDPS Act have been violated in view of a joint notice having been issued under Section 50(1) of the said Act, which has been deprecated in the judgment of *State of Rajasthan vs. Parmanand and another* passed by the Supreme Court.
2. That apart, the petitioners are in custody for 1 year and 6 months. Thirdly, it is argued that although the FIR mentions heroin as the contraband article, the said article was not found in the samples, which were sent twice for FSL report.
3. Learned counsel for the State opposes the prayer for bail in view of the presumption under Section 37 of the NDPS Act.

4. However, in the circumstances indicated above, the bar under Section 37 is considerably diluted. That apart, the petitioners are already in custody for 1 year and 6 months.
5. Keeping in view such circumstances, we are inclined to grant bail to the petitioners.
6. Accordingly, CRM (NDPS) 681 of 2023 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall furnish bonds of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Special Court (NDPS Act)-cum-Additional Sessions Judge, First Court at Jalpaiguri. The sureties may be common in respect of all the petitioners.
7. The petitioners shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
8. Further, the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)