

AD-11 & 51
Ct No.01
Jalpaiguri
22.09.2023
SP

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

CRM (NDPS) 752 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.09.2023 in connection with Matigara Police Station Case No. 649 of 2023 dated 09.08.2023 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of: MD.MOBARAK ALI

With

CRM (NDPS) 683 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. 744 of 2023 dated 01.08.2023 under Sections 21(c), 22(c) and 23(c) of the NDPS Act, 1985.

And

In the matter of: MD.MOBARAK ALI

Mr. Arnab Sengupta
Mr. Deborshi Dhar

... for the petitioner

Mr. Abhijit Sarkar

... for the State

1. CRM (NDPS) 683 of 2023 and CRM (NDPS) 752 of 2023 are taken up together, due to identity of the causes of action for both the petitions.

2. Initially, contraband articles were alleged recovered from co-accused persons. Subsequently, on the basis of the statement of the co-accused, the petitioner was apprehended. However, nothing was discovered from the person or property of the petitioner on the first count of alleged offence.
3. Thereafter, when the petitioner was in custody, allegedly the petitioner admitted that he had kept some amount of contraband substance concealed in a particular police barrack. Thereafter, it is alleged that the key to the said contraband was obtained from the wife of the petitioner, who was called by the police. Upon the wife having handed over the key to the police official, subsequently the accused was taken to the spot and allegedly the seizure was made from the said barracks. It is contended by the petitioner that the circumstances themselves are sufficient to dislodge the presumption under Section 37 of the NDPS Act. There was a time lapse between the petitioner being apprehended and the key being handed over as well as the seizure being made.
4. Learned counsel for the State strongly opposes the prayer for bail in respect of both the offences. It is submitted that in view of the rigours of Section 37 of the NDPS Act and since the amount of articles seized was of large quantity, bail should be refused on both counts to the petitioner.
5. Insofar as the first FIR is concerned, which is challenged in CRM (NDPS) 683 of 2023, we are of the opinion that the mere

statement of a co-accused person is not sufficient to indict the petitioner or cast any doubt on the antecedents of the petitioner, particularly since no seizure was made in respect of the first FIR from the person or property of the petitioner.

6. Insofar as the second FIR is concerned, the circumstances involved cast sufficient doubt on the prosecution case. First, it is rather surprising that the petitioner “confessed” about storing some contraband articles before the police while in police custody. Moreover, the wife of the petitioner, merely upon being called by the police, readily agreed and turned up with the key and handed it over to the police officials.
7. Conveniently for the prosecution, after a time lapse, during which period the key was in custody of the police, the accused was taken to the barracks and the recovery was alleged made.
8. Such circumstances cast sufficient ground to summarily dislodge the restrictions under Section 37 of the NDPS Act. Hence, we are of the opinion that it is doubtful as to whether the petitioner had any role to play in either of the alleged offences.
9. Accordingly, CRM (NDPS) 683 of 2023 as well as CRM (NDPS) 752 of 2023 are allowed. The petitioner is granted bail on both counts, subject to the petitioner furnishing composite bond of Rs.10,000/-, with two sureties of like amount each,

one of whom must be local, to the satisfaction of the learned Special Court NDPS Act, at Jalpaiguri.

10. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial in respect of both the offences. Further, the petitioner shall meet with the Investigating Officer once a fortnight during the entire period of investigation.
11. Also, the petitioner 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.)