

JPD-38
Ct No.01
13.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 689 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 04.09.2023 in connection with Siliguri Police Station Case No. 1114 of 2021 dated 11.09.2021 under Sections 21(C)/22(C) of the NDPS Act, 1985.

And

In the matter of: Md. Arman

.... petitioner

Mr. Gobinda Ghosh

... for the petitioner

Mr. Sourav Ganguly,
Mr. Chattu Roy

... for the State

1. Learned counsel for the petitioner contends that although there were previous rejections of bail, certain components of the case were not placed before the previous Benches. First, the petitioner is already in custody for two years and is now about 21 years old. Learned counsel places reliance on the judgment of *Mohd Muslim @ Hussain vs. State (NCT of Delhi)*, where the Supreme Court adopted a reformatory approach taking into consideration the tender age of the accused. That apart, it is submitted that the case numbers vary between the seizure list and the FIR, vitiating the apprehension of the petitioner and the seizure.
2. Thirdly, it is argued that the details of the contraband articles were not disclosed in the FIR.

3. Learned counsel for the State opposes the prayer for bail strongly and submits that all relevant details of the articles were mentioned.
4. Regarding the discrepancy in number between the seizure list and the FIR, it is submitted that the same is a minor technical error and ought not to be fatal to the proceeding.
5. We find from the previous rejection orders that the points now argued before this court were not taken before the previous Benches, nor considered as such. Since the principle of constructive *res judicata* is not applicable to criminal cases, we are inclined to entertain such arguments.
6. As there was a discrepancy in the case numbers between the seizure list and the FIR and keeping view the reformatory approach being encouraged by the Supreme Court in several judgments, including the *Mohd Muslim @ Hussain* (supra), we are inclined to grant bail to the petitioner, who is already in custody for two years.
7. Accordingly, CRM (NDPS) 689 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court (NDPS Act), 2nd Court at Siliguri.

8. The petitioner 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.
9. Further, 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.)