

AD-63
Ct No.01
Jalpaiguri
13.09.2023
SP

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

CRM (NDPS) 697 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on **05.09.2023** in connection with **C.R. (NDPS) Case No. 71 of 2022** arising out of 02/CL/NDPS/DRI/SLG/2022-23 of 2022-23 dated 01.06.2022 under Section 8(c) read with Section 21 and 22 of the NDPS Act, 1985.

And

In the matter of: MD. RIYAJUDDIN

.... petitioner

Mr. Arjun Chowdhury
Ms. Pratusha Dutta Chowdhury
Ms. Riya Agarwal

... for the petitioner

Mr. Ratan Barik
Mr. Saptarshi Banik

... for the DRI

1. Learned counsel for the petitioner contends that the seizure itself was unlawful, since it was made in the office of the DRI although allegedly the apprehension was made in a public place.
2. It is further contended that the circumstances under which the petitioner was apprehended and the process of seizure are suspect.
3. Moreover, the petitioner is in custody for one year three months and the 15 days.

4. Learned counsel for the DRI vehemently opposes the prayer for bail and submits that the restrictions under Section 37 of the NDPS Act are squarely applicable.
5. Learned counsel places reliance on Section 54 of the NDPS Act, to argue that under the said provision, there is a presumption regarding possession of the illicit articles with regard to articles for the possession of which the accused fails to account for satisfactorily.
6. Learned counsel further argues that as per the intention of the petitioner himself, summons was issued to the petitioner and pursuant to the same, the petitioner was arrested and the article was seized in the DRI office.
7. However, we find from the materials on record that the circumstance under which the petitioner was apprehended and the seizure was made in the office of the DRI is not satisfactory.
8. Although the DRI argues that summons was served on the petitioner and the apprehension was accordingly made along with the seizure in the DRI office, the very fact that the the petitioner was apprehended in a public place for the concerned offence but the seizure was carried out subsequently in the DRI office raises questions as to the method and mode of such seizure and arrest.
9. That apart, we do not find any justification to apply the principles of Section 54 in the present case, since Section 54 is not absolute but is circumscribed by proper arrest and

seizure being made in accordance with law. Unless the seizure and the mode of arrest are in accordance with law, the presumption under section 54 of the NDPS Act does not arise at all.

10. In such circumstances and keeping in view the fact that the petitioner is in custody for about more than one year, we are inclined to grant bail to the petitioner.
11. Accordingly, CRM (NDPS) 697 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) Siliguri.
12. The petitioner shall attend each and every day of trial and shall not leave the territorial jurisdiction of the trial court throughout the period of trial.
13. Moreover, 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.)