

**D/L. 64.**  
**September 13, 2023.**  
**MNS**

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

**CRM (NDPS) 698 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 Kotwali Police Station NCB Crime No. 11/NCB/KOL/2022 dated 25.03.2022 under Sections 8(c)/r/w 20(b)(ii)(C ), 35, 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Abhiram Biswas @ Amar Biswas

.... Petitioner

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

... for the petitioner

Mr. Kallol Mondal,  
Mr. Sagar Saha

... for the NCB.

1. Affidavit-of-service filed in court today be kept on record.
2. Heard learned counsel for the parties.
3. Learned counsel for the petitioner seeks to argue that there is patent contravention of Section 41B of the Code of Criminal Procedure as well as Section 52A of the NDPS Act.
4. It is argued that in the cross-examination of the alleged independent witnesses, it has come out that the said witnesses were forcibly taken to the BSF camp where they, under threat, put their signatures on the documents.
5. It is further argued that there is no Column 10 in the memo of arrest, which has also been annexed to the present petition.

6. Learned counsel appearing for the NCB vehemently opposes the prayer for bail and reiterates the fact that about 850 kilograms of contraband articles were recovered, which is palpably above the commercial quantity.
7. That apart, the contraband articles were recovered from the house of the petitioner and, as such, the petitioner cannot be exonerated on such score.
8. As regards the arguments of the petitioner regarding alleged discrepancy between the cross-examination of the independent witnesses and the official witnesses, it is argued that the law is well-settled that the discrepancies between the independent witnesses and the evidence of the official witnesses do not *ipso facto* vitiate the evidence of the official witnesses.
9. That apart, it is argued that all documents indicate towards compliance of law in the arrest and seizure of the petitioner, including the seizure list and all other relevant documents. As such, it is argued that the petitioner may not be granted bail.
10. Insofar as the cross-examination of the independent witnesses is concerned, the arguments of the respondent authorities swivel around the proposition that mere discrepancy between the evidence of the independent witnesses and the official witnesses does not *per se* vitiate the weight of the official witnesses' deposition. However, it is not a question of evidentiary value or weightage of evidence in the present case, but as to whether the provisions of the NDPS Act were duly complied with at the time of seizure of the articles and arrest of the petitioner.

11. The cross-examination of the independent witnesses are to be looked into, not for the purpose of ascertaining the worth or evidentiary value of the official witnesses' version, which is purely a subject matter of the criminal trial. However, such cross-examination is to be looked into for the limited purpose of ascertaining whether there was any violation of legal procedure in the process of apprehension and seizure. Both the independent witnesses, who had allegedly signed the relevant seizure list and memo of arrest, it is seen, unanimously give out that they were forcibly brought to the BSF camp around the same time, that is, 10/11 a.m. and were kept in the camp the whole day and forced to sign papers which indict the petitioner.
12. Both the said witnesses submitted in their cross-examination that they do not know why they signed the papers or what was written on those papers. Such depositions, although may not demolish *ipso facto* the worth of the official witnesses, hit at the root of the process of seizure and arrest and, as such, precluding the bar under Sections 54 and/or 37 of the NDPS Act from being applied in the first place.
13. That apart, the petitioner is also justified in arguing that there was contravention of the provisions of Section 41B of the Code of Criminal Procedure since there was no available Column 10 at all in the memo of arrest, which is an essential and integral part of such document.

14. In the absence of compliance of the above pre-conditions of law, it cannot be said that the statutory bars otherwise available can be invoked in the present case to refuse bail of the petitioner.
15. In such circumstances, we are inclined to grant bail to the petitioner.
16. Accordingly, CRM (NDPS) 698 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes 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 under NDPS Act, Coochbehar.
17. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date.
18. 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.)**