

AD-17
Ct No.01
Jalpaiguri
18.09.2023
B.Pal

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

CRM (NDPS) 701 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 06.09.2023 in connection with Siliguri Police Station Case No. 673 of 2022 dated 13.07.2022 under Section 21(C) of the NDPS Act, 1985.

And

In the matter of: **AJIJUR RAHAMAN @ AJIJUL RHAMAN @
AJIZUL RAHAMAN AND ANR**

...Petitioners

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

... for the petitioners

Mr. Abhijit Sarkar,
Ms. Namrata Das

... for the State

1. Learned counsel for the petitioners argues that there was specific contravention of Section 41B of the Code of Criminal Procedure insofar as although two independent witnesses signed the seizure list, none of them signed the Memo of Arrest. It is argued that the persons signing the Memo of Arrest, allegedly as independent witness, are police personnel as well.

2. It is further contended that initially the samples which were sent for FSL Report were drawn from the site of recovery and not before a Magistrate. Subsequently, the samples were re-sent after five months upon Magisterial Certification.
3. It is argued that the petitioners are in custody for 430 days, which is also a mitigating factor.
4. Learned counsel for the State vehemently opposes the prayer and submits that Raja Ghosh, the independent witness, was not a member of the raiding party. That apart, it is contended that due certification was done in respect of all the samples before sending the same for FSL Report.
5. Be that as it may, a strong prima facie case has been made out by the petitioners in so far as the independent witnesses who signed the seizure do not find place as signatories in the Memo of Arrest.
6. That apart, an arguable case has been made out by the petitioners. The contentions of the State that the petitioners have been named by several co-accused persons in their statements under Section 161 of the Cr. P.C. is also a feeble plinth in law to indict the petitioners.
7. Keeping in view the above circumstances and the period of incarceration, we are inclined to grant bail. Accordingly, CRM (NDPS) 701 of 2023 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall furnish bond of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the

learned Special Court (NDPS Act) at Siliguri. The sureties may be common in respect of all the petitioners.

8. 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.
9. 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.)