

JPD-08
Ct No.01
21.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 704 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 06.09.2023 arising out of NCB Crime No. 13/NCB/KOL/2023 dated 07.04.2023 under Sections 8(c) read with 20(b)(ii)(C) of the NDPS Act, 1985.

And

In the matter of: Ram Jiban Sarkar

.... petitioner

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... for the petitioner

Mr. Sudipto Kr. Mazumder, Ld. DSG,
Mr. Sudip Kr. Paul

... for the NCB

1. The petitioner argues that the petitioner's father's 'Sraadhha' ceremony is due to be held on September 23, 2023.
2. That apart, it is argued that the person who signed as a Gazetted Officer at the time of seizure was a part of the raiding team, which violates Section 50 of the NDPS Act.
3. Moreover, the provisions of Section 41B of the Code of Criminal Procedure were violated as the memo of arrest does not find mention of any independent witness.
4. Fourthly, although the seizure was allegedly carried out in the wee hours of the morning, the petitioner was allegedly arrested at around 6.20 p.m. Such huge time gap, it is submitted, vitiates the presumption under Section 37 of the NDPS Act.

5. Learned Deputy Solicitor General appearing for the NCB opposes the prayer for bail and contends that the statutory period of 180 days is not yet over. It is further argued that the petitioner was given a notice under Section 67 of the NDPS Act.
6. Learned Deputy Solicitor General next argues that the provisions of Section 41B of the Code of Criminal Procedure are not applicable *per se* to an arrest and seizure under the NDPS Act.
7. It is further submitted that the petitioner has criminal antecedents, as other criminal cases are pending against the petitioner for possession of illicit liquor.
8. Upon considering the submissions of the parties, we find that sufficient doubt is cast on the process of seizure and arrest.
9. First, the provisions of Section 50 of the NDPS Act *prima facie* appear to have been violated, since the Gazetted Officer concerned was a part of the raiding team.
10. Despite the learned Deputy Solicitor General, appearing for the NCB, being justified in submitting that since a notice under Section 67 of the NDPS Act was allegedly served on the petitioner, the question of contravention of Section 50 of the NDPS Act does not arise, even on other aspects, we find sufficient doubt in the process of arrest.
11. It is arguable, to say the least, whether the provisions of Section 41B of the Code of Criminal Procedure are applicable, since there is no provision in the NDPS Act which conflicts with Section 41B of the Code of Criminal Procedure, for holding that the NDPS Act

prevails over the Code of Criminal Procedure in the particular context. The memo of arrest clearly shows that there was no independent witness. Moreover, the process in which the arrest was carried out, even if after notice to examination was issued under Section 67 of the NDPS Act, is suspect, insofar as it remains unexplained as to why the petitioner was not arrested at the locale where the seizure was effected.

- 12.** As regards the petitioner's antecedents, pending complaints/cases in respect of illicit liquor do not, *per se*, tantamount to 'antecedents' of the petitioner in respect of the same offence as the present one.
- 13.** Moreover, we also keep in mind that the petitioner's father's 'Sraaddha' ceremony is due to be held on coming Saturday, that is, September 23, 2023.
- 14.** Keeping in view the above circumstances, we are inclined to observe that the exception under Section 37 of the NDPS Act, as enumerated in Sub-Section (1)(b)(ii) thereof, are applicable to the present case, for the purpose of granting bail to the petitioner.
- 15.** Accordingly, CRM (NDPS) 704 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), Coochbehar.
- 16.** The petitioner shall, during the process of investigation, meet the Investigating Officer once a week and shall not leave the territorial

jurisdiction of the trial court at any point of time until further order. As and when the trial commences, the petitioner shall attend each and every date of trial and continue to remain within the territorial jurisdiction of the trial court.

- 17.** 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.
- 18.** In default of any of the conditions as stipulated above, the petitioner's bail will stand cancelled upon giving an opportunity to the petitioner.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)