

D/L. 51.
September 13, 2023.
MNS

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

CRM (NDPS) 707 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 Matigara Police Station Case No. 1122 of 2020 dated 5.11.2020 under Sections 17(c)/23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Mahesh Mali

.... Petitioner

Ms. Rima Sarkar,
Ms. Sidhi Sethia

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Chattu Roy

... for the State.

1. Learned counsel for the petitioner has made out a strong *prima facie* case of violation of Section 52A of the NDPS Act, insofar as the certification of correctness of inventory annexed to the petition indicates that the quanta of the samples were 21 grams and 22 grams approximately, but the samples which were sent for FSL report were two packets of 5.0732 grams and 7.2620 grams respectively, which cast a doubt on the identity of the samples in each of the cases.
2. Learned counsel appearing for the State opposes the prayer for bail on the ground that the presumption under Section 37 of the NDPS Act is available.
3. However, in view of the mitigating circumstances diluting Section 37 of the NDPS Act, we are inclined to grant bail to the petitioner.

4. It may be recorded here that although the previous prayer for bail was rejected on February 28, 2023, the points as agitated now were not taken before the said Bench and the principles of constructive res judicata are not applicable as such in criminal jurisprudence.
5. Accordingly, CRM (NDPS) 707 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, Siliguri.
6. 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.
7. 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.)