

D/L. 22.
September 18, 2023.
MNS

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

CRM (NDPS) 717 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 08.09.2023 in connection with Pradhannagar Police Station Case No. 682 of 2022 dated 31.08.2022 under Sections 21(C) / 22 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Masum Sk.

.... Petitioner

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Dhiman Sil

... for the State.

1. Learned counsel for the petitioner contends that the petitioner is already in custody for 384 days. The quantity of contraband seized was just above the commercial quantity. Moreover, there is discrepancy in the quantity of samples seized and that sent for chemical examination.
2. Learned counsel appearing for the State vehemently opposes the prayer for bail and contends that the miniscule difference, even if there is any, between the samples recovered and sent for chemical examination does not vitiate the process of seizure or the indiction of the petitioner.
3. That apart, it is argued that the petitioner is in custody for only above one year and in view of one of the other accused persons absconding, the petitioner ought not be released.

4. Heard learned counsel for the parties.
5. We find that, however miniscule, keeping in view the nature of the contraband article, that is, brown sugar/heroin, the discrepancy of a bit more than .25 grams between the seized sample and that sent for examination is quite a lot, sufficient to vitiate *prima facie* the process of seizure.
6. That apart, since it is uncertain as to when the trial would be concluded, as one of the co-accused persons is absconding, we are inclined to grant bail to the petitioner.
7. Accordingly, CRM (NDPS) 717 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.
8. 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.
9. 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.)