

D/L. 28.
September 18, 2023.
MNS

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

CRM (NDPS) 724 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 Alipurduar Police Station Case No. 192 of 2023 dated 01.06.2023 under Sections 20(b)(ii)(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Pinki Sarkar

.... Petitioner

Mr. Jaydeep Kanta Bhowmik,
Mr. Sayantan Bhowmik,
Ms. Rikta Sarkar

... for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Sagnik Sankar Sikdar

... for the State.

1. Learned counsel for the petitioner submits that the provisions of Section 42(2) of the NDPS Act have not been complied with in the present case.
2. It is argued that Section 43 is not applicable since the recovery was allegedly made from a private vehicle which does not come within the purview of "public place" as contemplated in Section 43 of the NDPS Act.
3. It is also contended by learned counsel for the petitioner that for some unknown reason the independent witnesses, who signed on

the seizure list, were not the persons who signed on the memo of arrest. That apart, the names of the persons signing the memo of arrest do not find place in the initial complaint which gave rise to the FIR.

4. Learned counsel appearing for the State vehemently opposes the prayer for bail and submits that the provision of Section 42(2) of the NDPS Act have been duly complied with. In support of such contention, the case diary is handed up in Court for perusal.
5. Insofar as the other allegations are concerned, it is argued that the investigation is going on and charge-sheet has not yet been filed and it would be inappropriate to release the petitioner on bail at this juncture.
6. Upon keeping on balance the rigours of Section 37 of the NDPS Act and the personal liberty alleged to be violated by the petitioner, we are not inclined to grant bail to the petitioner for the following reasons:
 7. First, the provisions of Section 42(2) of the NDPS Act have been apparently complied with. Secondly, insofar as the alleged omission of the names of the independent witnesses who signed the memo of arrest in the complaint, the same is not so fatal as to dislodge the presumption under Section 37 of the NDPS Act.
 8. Per se, there is no bar in law for a third person to be the independent witness who signs a memo of arrest, although he did not sign the seizure list and/or was not named in the complaint. Not naming the independent witness who signs the memo of arrest is not fatal for the complaint or the FIR.

9. Thus, we do not find any reason to dislodge the presumption under Section 37 of the NDPS Act. More so, the charge-sheet has not yet filed and investigation is still under way.
10. Accordingly, CRM (NDPS) 724 of 2023 is dismissed.
11. However, the petitioner will be at liberty to renew her prayer after the charge-sheet is filed.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)