

D/L. 10.
September 21, 2023.
MNS

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

CRM (NDPS) 726 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 11.09.2023 in connection with Pradhannagar Police Station Case No. 208 of 2023 dated 24.03.2023 under Sections 21(c)/22(c)/27A/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Ahmed Mansuri and another

.... Petitioners

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... for the petitioners

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas

... for the State.

1. Learned counsel for the petitioners contends that Pappu Ali, the alleged independent witness in the memo of arrest, is not a resident of the locality. As such, the memo of arrest is vitiated.
2. Hence, it is submitted that the presumption under Section 37 of the NDPS Act does not act.
3. Learned counsel appearing for the State opposes the prayer for bail and contends that whether the said independent witness is a resident of the locality or not is a matter of trial and cannot be decided at this premature stage.
4. Further, it is argued that the presumption under Section 37 of the NDPS act is not mitigated in any manner.
5. Upon considering the submissions of the parties, we are in agreement with the arguments of the State insofar as the restrictions under Section

37 of the NDPS Act are operative. The question raised by the petitioners is, at best, a matter of trial.

6. Accordingly, CRM (NDPS) 726 of 2023 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)