

AD-13
Ct No.01
Jalpaiguri
21.09.2023
SP

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

CRM (NDPS) 729 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 New Jalpaiguri Police Station Case No. 126 of 2023 dated 16.02.2023 under Sections 20(c)/22(c)/25/29 of the NDPS Act.

And

In the matter of: MD. DAYAN HUSSAIN . . . for the petitioner

Mr. Partha Pratim Sarkar
Mr. Sudip Guha
Mr. Sandip Guha Ray

... for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Subhasish Misra

... for the State

1. Learned counsel for the petitioner argues primarily three points in support of the prayer for bail. First, the two mechanics who were called by the police themselves and signed as independent witnesses in the memo of arrest might not be classified as “independent” as such. Secondly, the person who signed the seizure list in the capacity of Gazetted Officer was an official of the same department as the raiding team. Thirdly, the petitioner’s mother is suffering from cancer which is at its third stage and the petitioner is the only the male member of the family.

2. Learned counsel for the State vehemently opposes the prayer for bail and submits that the charge-sheet has recently been filed and the charges are due to be framed soon. That apart, it is argued that the condition of the mother did not deteriorate overnight and her condition was the same when the petitioner was apprehended. Moreover, the petitioner himself is not a Cancer patient and cannot take such plea.
3. Secondly, it is argued that in view of Section 50(5) of the NDPS Act, there is a scope of persons other than a Gazette Officer or a Magistrate to sign, if he is duly authorized under Section 42 of the said Act.
4. Even otherwise, it is argued that the two mechanics can very well be said to be independent witnesses.
5. Insofar as the first ground is concerned, although there is some doubt as to whether two persons called by the investigating team in a premeditated way as mechanics and who are part of the process of seizure can be called independent witnesses, the niceties of such point need not be gone into at this stage, since the same is predominantly a subject-matter of trial.
6. As far as the second ground is concerned, Section 50(5) confers discretion in law for a person duly authorized under Section 42 of the NDPS Act to act during seizure instead of a Gazetted Officer or Magistrate. However, insofar as the circumstances stipulated in Section 50(5) are concerned, we do not find anything on record to indicate as to why it was not possible for

the search to be carried out under the aegis of the nearest Gazetted Officer or Magistrate.

7. Moreover, the petitioner pleads to be the only male member of the family and his mother is in the third stage of Cancer and since the petitioner seeks to have his mother admitted in a good hospital in an around Siliguri, we find that the same is a sufficient reason to grant bail to the petitioner on stringent conditions.
8. It has to be kept in mind, however, that the respondents are apprehensive that the petitioner is a permanent resident of Manipur and may flee the jurisdiction of the Court.
9. Keeping in regard the above considerations, CRM (NDPS) 729 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish 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 at Jalpaiguri.
10. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
11. 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.

12. It is further to be noted that in the event the petitioner seeks to leave the territorial jurisdiction of the Trial Court during the period of Trial, the petitioner shall have to obtain leave from the Trial Court and shall be so permitted only for the limited purpose of attending his mother at Manipur or bringing his mother from Manipur to the territorial jurisdiction of the Siliguri Court for the purpose of her treatment. In such event, it will be open to the Trial Court also to impose strict measures to ensure that the petitioner does not flee justice by going to Manipur.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)