

D/L. 25.
September 21, 2023.
MNS

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 747 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.09.2023 in connection with Bhaktinagar Police Station Case No. 448 of 2023 dated 4.06.2023 under Sections 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Triptimoy Baidya and another

.... Petitioners

Mr. Anirban Banerjee

... for the petitioners

Mr. Abhijit Sarkar,
Mr. Arjun Chowdhury

... for the State.

1. Learned counsel for the petitioners contends that the petitioners are entitled to bail, in view of contravention of Section 41B of the Code of Criminal Procedure as well as in view of the fact that a co-accused on similar footing was released on bail by an order dated August 17, 2023.
2. Learned counsel appearing for the State opposes the prayer for bail and submits that the petitioners are not on equal footing as the co-accused, who was enlarged on bail by the co-ordinate Bench. In the said case, the co-accused was a lady and there was a misconception on the part of the Investigating Officer that a lady police officer should sign the memorandum of arrest since the team was raiding a lady, which vitiated the arrest in the perception of the co-ordinate Bench within the contemplation of Section 41B of the Code of Criminal Procedure.
3. However, in the case of the present petitioners, an independent witness duly signed the memo of arrest and, as such, the provision of Section 41B of the Code of Criminal Procedure were duly complied.

4. We find that the petitioners are in custody for 110 days only and the yardsticks which were the basis of grant of bail to the co-accused do not apply to the present petitioners in view of the discussions made above.
5. Hence, the ground of parity is not applicable to the petitioners and, as such, the presumption under Section 37 of the NDPS Act operates in the present case.
6. Accordingly, CRM (NDPS) 747 of 2023 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)