

JPD-03
Ct No.01
20.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRM (SB) 13 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 12.09.2023 in connection with C.R. No. 361 of 2023 under Section 51 of the Wild Life Protection Act, 1972.

And

In the matter of: Sanjay Barman and another

.... petitioners

Mr. Anirban Banerjee,
Ms. Sohini Guha Roy

... for the petitioners

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas

... for the State

1. Learned counsel for the petitioners contends that there was patent violation of Section 41B of the Code of Criminal Procedure insofar as no independent witness signed the memo of arrest.
2. Learned counsel places reliance on the judgment of *Moti Lal vs. Central Bureau of Investigation and another*, reported at (2002) 4 SCC 713, where it was observed that apart from certain specific provisions, it cannot be said that operation of the rest of the provisions of the Code of Criminal Procedure are excluded. It is, thus, argued that the procedure of arrest and seizure in the present case is itself suspect, for which bail ought to be granted to the petitioners. That apart, the petitioners are in custody for 110 days.

3. Learned counsel for the State opposes the prayer for bail. It is argued that the trial has been substantially concluded and only one witness is left to be examined. That apart, it is submitted that there are specific confessional statements of the petitioners which fix liability of the crime on the petitioners as well, at least to the extent that the petitioners were associated with the offence.
4. Although the arguments of the State regarding the petitioners' involvement are rather flimsy, and not sufficient to dispel the doubt cast on the seizure in view of non-compliance of Section 41B of the Code of Criminal Procedure, an important consideration here is that substantial amount of elephant tusks were recovered from a bus, where the petitioners were travelling along with other co-accused.
5. Moreover, the trial is on the verge of completion and only one witness is left to be examined. As such, it would not be prudent to enlarge the petitioners on bail at this particular juncture.
6. Accordingly, CRM (SB) 13 of 2023 is dismissed, however, with liberty to the petitioners to approach this court for bail in the event the trial is not concluded within three months from date. The trial, it is expected, shall be concluded within the said period of three months.

(Sabyasachi Bhattacharyya, J.)