

**D/L. 45.**  
**September 21, 2023.**  
**MNS**

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

**CRM (NDPS) 750 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 Kalimpong Police Station Case No. 243 of 2021 dated 01.09.2022 under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 46(B) of Bengal Excise Act.

And

In the matter of: Suben Subedi

.... Petitioner

Ms. Supriya Singh,  
Mr. arjun Chowdhury

... for the petitioner

Mr. Aditi Shankar Chakraborty,  
Mr. Aniruddha Biswas

... for the State.

1. Learned counsel for the petitioner contends that the petitioner is in custody for one year and twenty days.
2. Further, there was a gross violation of second proviso to Section 42(1) of the NDPS Act to the extent that even from the FIR, it transpires that the arrest was effected long after sunset.
3. That apart, it is argued that the person who signed as a witness in the memo of arrest is not a witness in the seizure list. Such discrepancy itself vitiates the process of search and seizure, it is argued.
4. Learned counsel appearing for the State opposes the prayer for bail and submits that the trial has progressed substantially and shall be concluded soon. As such, bail ought not to be granted to the petitioner at this stage.

5. We find that the petitioner is in custody for more than one year.  
That apart, the petitioner is justified in arguing that the provision of the second proviso to Section 42(1) of the NDPS Act was *prima facie* vitiated since the arrest was effected long after sunset.
6. That apart, keeping in view that the petitioner is in custody for quite some time and custodial trial is not necessary, we are inclined to grant bail to the petitioner.
7. Accordingly, CRM (NDPS) 750 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes 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 under NDPS Act, Kalimpong.
8. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date.
9. 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.

**(Sabyasachi Bhattacharyya, J.)**

**(Uday Kumar, J.)**