

AD-17
Ct No.01
Jalpaiguri
22.09.2023
B.Pal

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

CRM (NDPS) 758 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 Matelli Police Station Case No. 121 of 2022 dated 19.05.2022 under Section 22(b) of the NDPS Act, 1985.

And

In the matter of: MD AHESAN

...Petitioner

Mr. Biswarup Roy,

... for the petitioner

Mr. Sourav Ganguly,
Mr. Subhasish Misra

... for the State

1. Learned counsel for the petitioner argues that the petitioner was arrested and the seizure was allegedly made on May 19, 2022, in the presence of the petitioner but not from the possession of the petitioner.
2. The sample was sent for FSL Report after about 2 months from the seizure, which vitiates the seizure itself.

3. That apart, it is argued that the trial has not yet begun as such.
4. Learned counsel for the State opposes the prayer for bail and submits that the sample is, in law, to be sent for chemical examination as early as possible but there is no specific time limit for so sending. Accordingly, it is submitted that the prayer for bail be refused, since the charge-sheet has already been filed and the trial is about to commence.
5. We are of the opinion that since the petitioner is already in custody for more than one year four months and since the sample was sent for examination about two months after the seizure, which itself is sufficient to cast some doubt on the process of seizure, the petitioner ought to be granted bail. Moreover, since the trial has not yet begun, it is uncertain as to how long the petitioner will have to be in custody otherwise, despite being only an under-trial as of today.
6. Accordingly, CRM (NDPS) 758 of 2023 is thus 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 Special Court under NDPS Act, at Jalpaiguri.
7. 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.

8. 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.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)