

27.09.2023.
Item Nos. 10 & 11
Court No.1
ap

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

C.R.M. (NDPS) No. 760 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 13.09.2023 in connection with New Jalpaiguri Police Station Case No. 501 of 2023 dated 30.05.2023 under Sections 20(b)(ii)(c)/27A/28/29 of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of: **Samit Das.** ...Petitioner
AND

C.R.M. (NDPS) No. 773 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 14.09.2023 in connection with New Jalpaiguri Police Station Case No. 501 of 2023 dated 30.05.2023 under Sections 20(b)(ii)(c)/27A/28/29 of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of: **Pappu Modak.** ...Petitioner

Mr. Partha Pratim Sarkar.
Mr. Sudhindra Das. ...For the petitioner

Mr. Tapan Bhattacharjee,
Mr. Dhiman Sil.
...For the State
in CRM (NDPS) No.760 of 2023.

Mr. Tapan Bhattacharyee,
Mr. Arjun Chaudhury.For the State
in CRM (NDPS) No. 773 of 2023.

1. The application for bail is canvassed on twofold grounds. Firstly that two of the co-accused persons have been granted bail by two separate Co-ordinate Benches of

this Court in C.R.M. (NDPS) No.569 of 2023 and C.R.M. (NDPS) No.706 of 2023.

2. By an order dated 18th August, 2023 passed in C.R.M. (NDPS) No. 569 of 2023, a Co-ordinate Bench of this Court has noted that in Column 10 of the Memorandum of Arrest, the signature that is available is that of the Police Officer, who was part of the raiding party. This, according to the said Co-ordinate Bench, is a violation of Section 41B of the Code of Criminal Procedure, which is introduced after the decision of the Hon'ble Supreme Court of India in the case of ***D.K. Basu – Vs. – The State of West Bengal*** reported in ***(1997) 1 Supreme Court Cases 416***.

3. The Co-ordinate Bench has also found that Section 41B(b) read with Section 60A of the Code of Criminal Procedure would mandate the procedure of arrest to contain the signature of a responsible person of society or a family member against Column No.10.

4. This Court however notes that the petitioner is a resident of Cooch Behar and it is unlikely that any family member would be present to close by. In fact in most cases the family members are unlikely to be present in the scene of a crime. Any common man would first hesitate to put a signature on any document of the police for the natural inhibition that the people in this country have towards any police procedure.

5. In those circumstances, this Court is of the view that mere absence of a signature of a respectable person of society or family member in the Memorandum of Arrest would not ipso facto vitiate a seizure or arrest.

6. This Court has very carefully considered the entire case diary. The contraband articles comprising of 63 kilograms of Ganja was recovered from a coffin inside the Ambulance in broad day light on a Canal Road near Ghoramore under New Jalpaiguri Police Station. Seeing the police personnel and the raid being conducted no local person was willing to come forward to sign against column no.10 of the Memorandum of Arrest. The aforesaid cannot be termed as an unusual occurrence.

7. The entire raid was videographed in terms of a mandatory direction of another Division Bench of this Court in July, 2022.

8. Having regard to the facts and circumstances of this case and having considered the case diary very carefully, this Court in respectful disagreement with the view expressed by a Co-ordinate Bench on 18th August, 2023 in C.R.M. (NDPS) No. 569 of 2023.

9. In the above circumstances, this Court is of the view that the infraction of Section 41B(b) of the Code of Criminal Procedure in column no.10 of the Memorandum of Arrest and Seizure list containing the member of the raiding party signing thereat, would not ipso facto vitiate

the procedure of arrest. Section 37 of the Narcotic Drugs and Psychotropic Substances Act would become attracted in the instant case.

10. C.R.M. (NDPS) No. 760 of 2023 and C.R.M. (NDPS) No.773 of 2023 are, thus, dismissed.

11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(*Supratim Bhattacharya, J.*) (*Rajasekhar Mantha, J.*)