

22.09.2023

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***Calcutta High Court
In the Circuit Bench at Jalpaiguri***

CRM (NDPS) 772 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 14.09.2023 in connection with Kharibari Police Station Case No. 297 of 2021 dated 29.09.2021 under Sections 18/21(c)/22(c)/29 of the NDPS Act, 1985.

In the matter of : Bijay Dahal @ Bijoy Dahal ... petitioner

Mr. Hillol Saha Podder,
Ms. Mousumi Das

...for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas

...for the State

1. Learned counsel appearing for the petitioner contends that the petitioner's previous application for bail was dismissed on July 12, 2023.
2. It is argued that the signatory to the memo of arrest was a part of the raiding team, which vitiates the provisions of Section 41B of the Code of Criminal Procedure, which issue was not urged at the time of the previous rejection of bail.
3. Moreover, a co-accused person on similar footing as the petitioner has obtained bail subsequent to the previous rejection of bail of the present petitioner.
4. Learned counsel for the State argues that the issue of applicability of Section 41B of the Code of Criminal Procedure in NDPS cases is arguable, in view of divergent views of this Court. That apart, the arrest is a post-seizure process and, as such, does not vitiate the seizure itself.

5. Keeping in view of the fact that a co-accused person on similar footing as the petitioner has already been released on bail subsequent to the rejection of bail of the present petitioner and that the petitioner has at least raised an arguable issue as to the contravention of Section 41B of the Criminal Procedure Code, the petitioner has cast sufficient doubt on the applicability of Section 37 of the NDPS Act. Hence, we are inclined to grant bail to the petitioner.
6. Accordingly, CRM (NDPS) 772 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish a bond of Rs. 10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Court (under NDPS Act), Siliguri. The petitioner shall not leave the territorial jurisdiction of the Trial Court during the entire period of trial and shall attend on each and every date of trial.
7. Moreover, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the court or to any police officer or tamper with evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)