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

CRM (NDPS) 406 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 29.11.2022 in connection with Kumargram Police Station Case No. 106 of 2022 dated 17.03.2022 under Sections 18(b)/25/29 of the NDPS Act, 1985.

In the matter of : Dinesh and another
... Petitioners

Mr. Arnab Sengupta,
Mr. Janardan Periwal
...for the Petitioners

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas
.....for the State.

Learned counsel for the petitioners points out several discrepancies and inherent contradictions between the First Information Report, the seizure list and the subsequent certification as well as the charge sheet.

It transpires from the materials on record that there is patent discrepancy in the mode of numbering of the alleged samples of contraband articles in-between the seizure list, F.I.R. as well as the certification. In fact, at a subsequent stage in the charge sheet, it is seen that although the initial allegation was that the articles were confined to opium, a

sample of ganja has also been added to the entire bundle of samples.

That apart, the petitioners have made out a strong *prima facie* case to create a suspicion with regard to the seizure inasmuch as Standing Order No. 1/89, Section II which pertains to general procedure for sampling, storage, etc. and has binding force in law, has not been complied with.

Clause 2.4 thereof specifically stipulates that in case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

Clause 2.5, on the other hand, clarifies that when the packages/containers seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish, where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

In the present case, however, there is nothing to show that either of the two clauses was complied with in any manner.

We have carefully perused the provisions of Section 37 of the N.D.P.S. Act, 1985, which creates a reverse burden on the accused person. However, in the present case, we do not find that the charges have been framed properly; rather, the inherent discrepancy in the case sought to be made out against the petitioners, on the grounds indicated above, vitiate the seizure itself, thereby diluting the stringent presumption under Section 37 of the N.D.P.S. Act.

As such, the reverse burden contemplated therein cannot be applied to the present case. In such view of the matter, at the stage of considering the bail application of the petitioners, we find sufficient grounds for giving benefit of doubt to the petitioners.

Accordingly, CRM (NDPS) 406 of 2022 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall individually furnish bonds of Rs. 10,000/- (Rupees Ten Thousand) each, 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), Jalpaiguri. The sureties may be common for both the petitioners. The petitioners shall not leave the territorial jurisdiction of the trial court without the leave of the trial

court during the entire period of trial. Moreover, the petitioners 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.

CRM (NDPS) 406 of 2022 is, accordingly, disposed of.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)