

D/L. 6
January 31, 2023
MNS

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

CRM (NDPS) 449 of 2022

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 23.12.2022 in connection with NDPS Case No. 04 of 2022 arising out of NJP GRPS Police Station Case No. 01 of 2022 dated 06.01.2022 under Sections 21(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Samsul Shaikh

.... Petitioner

Mr. Arjun Chowdhury

... for the petitioner

Mr. Arun Kumar Sarkar,
Mr. Biswarup Roy

... for the State

Learned counsel for the petitioner alleges that although the petitioner was arrested by RPF personnel in the New Jalpaiguri Railway Station at around 11 p.m. in the night of a particular date, the FIR was registered much subsequently in the next morning. It is submitted that in the absence of anything to show that the witnesses were present during the entire period when the seized articles were in the custody of the RPF personnel, a valid suspicion is raised to dispel the presumption under Section 37 of the NDPS Act.

Learned counsel for the State contends that about 9.90 gms. of heroin, which is much more than the commercial quantity, was recovered from the petitioner. That apart, there are no other lapses on the part of the respondent authorities in either the process of seizure or arrest.

We find from the arguments of the parties that the allegations raised by the petitioner may be fit grounds to agitate in the trial. However, at this stage, it cannot be said that the presumption raised under Section 37 of the NDPS Act has been dispelled completely to grant bail to the petitioner.

Accordingly, CRM (NDPS) 449 of 2022 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)