

22.11.2023

Serial no.20

Court No.1

(CHC)

(Rejected)

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

CRM (DB) 847 of 2023

*In re : An Application for **Bail** under Section **439** of the Code of Criminal Procedure in connection with Seizure Case No.04/NDPS/CL/Phensedyl/Cus/Birpara PU/2022-23 dated 22.03.2023 under Sections 21/22/23/25/29 of the Narcotic Drugs and Psychotropic Substances Act.*

-And-

In the matter of : **Anil Shaw**

... .. Petitioner

Mr. Sudip Guha, Advocate

... .. For the Petitioner

Mr. Ratan Banik

*... ..For the **Customs Department***

Petitioners pray for bail.

Learned advocate appearing for the petitioner draws the attention of the Court to the seizure list dated March 22, 2023. He submits that, the alleged interception occurred on March 22, 2023 at about 12:30 hrs. Seizure took place on March 22, 2023 at the premises of Birpara LCS office at 23.30 hrs. He relies upon an unreported decision of a coordinate Bench dated

September 13, 2023 passed in CRM(NDPS) 697 of 2023 where, he contends that, the coordinate Bench granted bail on the ground of discrepancy in the time of interception and seizure. A member of the raiding party acted as gazetted officer.

Customs are represented.

Commercial quantity of narcotics were seized from the possession of the petitioner.

The interception occurred on March 22, 2023 at 12:30 hrs with the seizure taking place on the same date at about 23:30 hrs at the premises of Birpara LCS office. The office is that of the customs authority.

It is not uncommon that incident occurs at a particular place and the vehicle is taken to the office of the customs for the purpose of search and seizure.

We are not in favoured with the Case Diary with regard to the CRM(NDPS) 697 of 2023 and therefore, we are unable to hold that the petitioner is similarly placed as the person granted bail therein. Each case revolves at its own fact. Simpliciter on the ground that, interception occurred at a particular place with the seizure occurring at a different place, is not sufficient to entitle the petitioner to contend that he is able to over the restrictions under Section 37 of the N.D.P.S. Act, 1985. Issue raised by the petitioner is a matter of trial, if raised by the petitioner.

Commercial quantity of narcotics was recovered from the vehicle driven by the petitioner. Constructive possession of the petition in respect of the commercial quantity of narcotics seized cannot be overlooked.

In such circumstances, we are of the view that petitioner is unable to overcome the restrictions under Section 37 of the N.D.P.S. Act, 1985.

CRM(NDPS) 847 of 2023 is rejected.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)