

AD-18
Ct No.01
Jalpaiguri
30.01.2023
TN

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

CRM (NDPS) 458 of 2022

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with JPG Kotwali Police Station Case No. 310 of 2021 dated 14.06.2021 under Sections 21(c)/22(C) of the NDPS Act, 1985, charge sheet submitted vide Charge Sheet No. 04 of 2022 dated 04.01.2022 for alleged offence punishable under Section 20(C)/22(C)/25/29 of NDPS Act.

And

In the matter of: Jafiuddin Miha @ Jafiruddin Mia and another
.... petitioners

Mr. Biswarup Roy

... for the petitioners

Mr. Ujjwal Luksom,
Ms. Namrata Das

... for the State

Learned counsel for the petitioners contends that no independent witness signed in the seizure list. The same was signed only by police personnel. In this context, learned counsel cites an unreported coordinate Bench judgment dated December 16, 2021 passed in CRM 5799 of 2021 where it was held that under similar circumstances, bail was granted in view of the statutory presumption under Section 37 of the NDPS Act having been held to be rebutted.

Learned counsel further submits that the seizure list does not disclose the specific location from where the contraband articles were allegedly seized. It is also contended that the same does not disclose clearly that the contraband articles were found from the possession of the petitioners.

Learned counsel for the State controverts such contentions and places reliance on the seizure list, which specifically mentions in detail the particular motor cycle from which the articles were seized, on which the petitioners were riding at the relevant juncture.

It transpires from the seizure list that undoubtedly the same was signed only by police personnel. However, it is not the law, nor was it held specifically in the coordinate Bench judgment cited, that the same can be a sole ground for rebutting the presumption raised under Section 37 of the NDPS Act. That apart, it is seen from the seizure list that the same is not vitiated otherwise and clearly discloses the details of the motor cycle from which the articles were found.

Moreover, the approximate location of the seizure is mentioned in the seizure list to be on NH 31 near “Motorist Inn”. As such, we do not find beyond doubt that the presumption under Section 37 of the NDPS Act has been rebutted in the facts of this particular case, at least for the purpose of grant of bail.

Accordingly, CRM (NDPS) 458 of 2022 is dismissed. However, it is made clear that the merits of the allegations and counter-allegations have not been entered into by this court.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)