

AD-13
Ct No.01
Jalpaiguri
31.01.2023
TN

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

CRM (NDPS) 459 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 New Jalpaiguri Police Station Case No. 404 of 2021 dated 29.04.2021 under Section 23(c) of the NDPS Act, 1985 and charge sheet no. 1015 of 2021 dated 19.10.2021 under Section 23(c) of the NDPS Act.

And

In the matter of: Jul Haque

.... petitioner

Ms. Madhushri Dutta

... for the petitioner

Mr. Ujjwal Luksom,
Ms. Namrata Das

... for the State

The grievance of the petitioner is that when the petitioner was sought to be arrested, the provision of Section 50(1) of the NDPS Act, which stipulates that the person has to be taken to the nearest Gazetted Officer or to the nearest Magistrate without unnecessary delay, was not substantially complied with.

Learned counsel for the petitioner cites an unreported judgment of the Supreme Court rendered in *Vijaysinh Chandubha Jadeja vs. State of Gujarat (in Criminal Appeal No. 943 of 2005)* in support of the proposition that in view of the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, namely to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it

would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a Gazetted officer or a Magistrate.

Learned counsel also cites the judgment of the Supreme Court in *Sarija Banu (A) Janarthani Vs. State Through Inspector of Police*, reported at (2004) 12 SCC 266, in support of the proposition that non-compliance of Section 42 of the NDPS Act leads to an important factor for the purpose of considering the ground of bail.

Learned counsel appearing for the State, by placing reliance on the gist of the FIR, which is a part of the case diary, submits that it was specifically mentioned therein that such notice was given to the petitioner to apprise him of his rights.

Upon a perusal of the said documents, however, it transpires that allegedly one Hemant Sharma gave an option in writing to the detained person “to search Police Persons” before searching by police upon oath.

However, we do not find from the said submission that there was any compliance of Section 50(1) of the NDPS Act, as interpreted in paragraph no.22 of *Vijaysinh Chandubha* (supra). In the said judgment, what was to be apprised to the person intended to be searched was his right to be searched before a Gazetted Officer or a Magistrate, as stipulated in Section 50(1). However, no such appraisal is found from the gist of the FIR.

That apart, more importantly, the charge-sheet ultimately submitted does not tally with the initial FIR, since the charge-sheet did not mention any modicum of heroin being found on the person of the petitioner whereas the FIR was based on the seizure of heroin.

In such view of the matter, we find sufficient grounds of suspicion to grant bail to the petitioner.

Accordingly, CRM (NDPS) 459 of 2022 is allowed, thereby granting bail to the petitioner on condition of the petitioner furnishing bond of Rs.10,000/-, 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), Second Court at Jalpaiguri. The petitioner shall not make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)