

5.
03-07-2024
(ct. no.28)
debajyoti
(allowed)

CRM (NDPS) 876 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with T.R Case No.30 of 2023 corresponding to Howrah GRPS Case No.98 of 2023 dated 30-08-2023 under Sections 21(b)/29 of the Narcotic Drugs and Psychotropic Substances Act.

- A n d -

In the matter of : Rahul Dutta & Anr.

.... Petitioners.

Mr. Sabyasachi Banerjee,
Mr. Abhra Jena,
Mr. Ayan Mondal

... For the Petitioners.

Mr. Kaushik Kundu,
Mr. Santanu Talukdar

... For the State.

The State has filed a report pursuant to our earlier order. Let the same be kept with the records.

From the forwarding report annexed to the bail petition, we find that the Gazetted Officer, who witnessed the search and seizure and the arrest, directly supervised the process of search and seizure. Therefore, he must be deemed to be a part of the raiding team and directly involved in the search and seizure. In other words, he was an interested party. He could not have acted as an independent witness.

In **State of Rajasthan Vs. Parmanand and Anr.**, reported at **(2014) 5 Supreme Court Cases 345**, the Hon'ble Supreme Court observed that a member of the raiding party cannot act as an independent witness to the search and seizure process or arrest of the accused person.

That would frustrate the intent of Section 50(1) of the NDPS Act.

In the present case, we find that the petitioners are in custody for about 300 days. There was no recovery from their person.

Primarily on the ground of breach of the provisions of Section 50 sub-section (1) of the NDPS Act, we are of the view that the restrictions in Section 37 of the NDPS Act stand diluted. We are, hence, inclined to allow the petitioners' prayer for bail.

Accordingly, we direct that the petitioners, namely, **Rahul Dutta** and **Ricky Dutta @ Riki Dutta**, shall be released on bail upon furnishing bonds of Rs.25,000/- (Rupees Twenty Five Thousand) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Judge, Special Court under NDPS Act-cum- Additional District and Sessions Judge, 3rd Court at Howrah. The petitioners shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever. The petitioners shall remain within the jurisdiction of the local police station and shall report to the Officer-in-Charge of the said police station twice in a week, until further orders.

In the event the petitioners fail to comply with any of the conditions stipulated above, the trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

The application for bail being CRM (NDPS) 876 of 2024 is, thus, **allowed**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)