

CRM (NDPS) 905 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Hingalganj Police Station** Case No. **232 of 2023** dated **18.10.2023** under Sections **21(c)/27** of the NDPS Act read with Sections 14A(b)/14C of the Foreigners Act.

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In the matter of : Afsar Gazi @ Md. Afcher Gazi

.... Petitioner.

Mr. Moyukh Mukherjee,
Mr. S. Banerjee,
Mrs. Sarmistha Basak,

... For the Petitioner.

Mr. Iqbal Kabir,
Mrs. Payel Ghosh,

... For the State.

The petitioner is a Bangladeshi national. He says that he holds valid Indian visa. He was apprehended from the Indian side of the border by the BSF personnel and allegedly 200 bottles (commercial quantity) of phensedyl was seized from a place which he had indicated. He was taken into custody on October 17, 2023. Since then he has been in custody.

Learned Advocate for the petitioner argues that there are several lacuna in the procedure followed by the BSF personnel for seizing the contraband. Firstly, the place of seizure is not specified. Secondly, no independent witness was there, so on and so forth.

Learned Advocate for the State produces the case diary. We have seen the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure which *prima facie* implicate the petitioner.

On an overall assessment of the material on record and the fact that commercial quantity of contraband item is involved and keeping in mind the restrictions in Section 37 of the NDPS Act, we are not inclined to allow the petitioner's prayer for bail.

The petitioner would argue that he has been able to rebut the presumption in Section 37 of the NDPS Act. We unfortunately do not agree with him. The points that he has raised today may be argued by him at the trial. Presently, we are not inclined to entertain his prayer.

CRM (NDPS) 905 of 2024 is, thus, dismissed.

We are told that two other accused persons are absconding. Let not the trial be held up for non-availability of such persons. If necessary, the learned Trial Court shall split up the trial and proceed with the trial in so far as the petitioner herein is concerned as expeditiously as possible.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)