

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

12.03.2024
Court No.1
(D/L 03)
(AK)

CRM (NDPS) 87 OF 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Kalimpong Police Station Case No.80 of 2023 dated 17.06.2023 under Section 22(c) of N.D.P.S. Act, 1985.

And

In the matter of: **Arif hussain**

... Petitioner.

Mr. Sourav Ganguly
Ms. Rishita Chakraborty
Mr. Abhisekh Sarkar

...for the petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Aniruddha Biswas

...for the State.

1. There are several gross irregularities in the facts of the present case. The prosecution has miserably failed to explain these irregularities. The prosecution in fact does not even have a clue as to the facts which are brought before the court.
2. First, the FIR dated 17.06.2023 of one SI, Abhijeet Subba of the Kalimpong P.S. contains a specific statement that when the SI accompanied the petitioner towards his shop at main road, Kalimpong, to verify the petitioner's statements, the petitioner tried to flee from the spot at 23.25 hours and

sustained some injury by reason of which the petitioner was taken for medical treatment at Kalimpong District Hospital. The petitioner was medically treated at 23.40 hours by the Medical Officer. The record sheet of the District Hospital, Kalimpong which was handed over by the record section of that Hospital on 19.02.2024, however, reflects that the petitioner was admitted to the hospital at “8:50 p.m.” by the Kalimpong Police Station for “injury”.

3. Hence, there is an obvious discrepancy between the time of 23, 25/23.40 hours recorded in the FIR and the records of the Kalimpong Medical Hospital. Incidentally, the record has been certified as a true copy from the Superintendent of the District Hospital, Kalimpong.
4. Apart from this gross irregularity, we also find that column 10 of the Memo of Arrest does not have any signatures of a witness. It is a blank space. The Supreme Court commented on such procedural irregularities in *D.K. Basu V. State of West Bengal* reported at (1997) 1 SCC 416.
5. Section 41B of the Code of Criminal Procedure inserted with effect from 01.11.2010, after the dictum in *D.K. Basu (supra)*, lays down the procedure of arrest and duties of an officer making arrest. Section 41B(b)(i) requires the attestation of the Memorandum of Arrest at least by one witness who is a member of the family of the person arrested or a respectable

member of the locality from where the arrest is made. Section 100(2)(4) also mandates the same procedural requirement. The dictum in *D.K. Basu (supra)* has been followed by several coordinate Benches including in *2023 SCC Online Cal 2008* (in *Re: Prabal Sen*). Section 60A of the CrPC inserted with effect from 31.12.2009 makes the procedure for arrest under the CrPC to be mandatory. In any event, the prosecution draws a blank in respect of the above violations.

6. Although we have been informed that the petitioner has been framed by the Kalimpong Police Station as a result of certain other incidents, we do not wish to go into that aspect of the matter.
7. These facts are sufficient to rebut the statutory restriction in Section 37 of the NDPS Act, 1985.
8. We are hence inclined to allow the prayer for bail for the above reasons.
9. The petitioner shall accordingly be released on bail upon furnishing bond of Rs. 10,000/- (Rupees Ten Thousand) 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, 1985), Kalimpong. The petitioner shall not induce or influence witnesses or tamper with evidence in any manner whatsoever. The petitioner shall not leave the local

limits of the concerned Police Station during the entire period of trial without obtaining leave from the learned Court.

10. C.R.M.(NDPS) 87 of 2024 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)