

13.05.2024

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rejected

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

C.R.M.(NDPS) No. 134 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Maynaguri Police Station Case No. 66 of 2023 dated 20.02.2023 under Sections 8(c)/21(c)/29 of the NDPS Act.

And

In Re : Md. Saiful Alam petitioner

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Mr. Naser Ali
Mr. Raj Kumar Mitra
Ms. Mrinmayee Das
Mr. Manish Gupta
....for the petitioner

Mr. Kallol Acharjee
Mr. Tapan Bhattacharjee
Mr. Kallol Nag
..... for the State

1. Learned Counsel for the petitioner submits there are infirmities with regard to search and seizure procedure. He also submits there is non-compliance of Section 52A of the NDPS Act. He prays for bail.

2. Learned Counsel for the State opposes the bail prayer.

3. We have considered the materials on record. Statements of witnesses and seizure memorandum show recovery of 366 bottles of Phensedyl Syrup containing codeine phosphate above commercial quantity from a bag carried by the petitioner. Alleged recovery was not from the person of the accused. Hence, compliance of Section 50 of the NDPS Act does not arise in the facts of the case. Investigating officer being a member of the raiding party *per se* does not invalidate the prosecution case unless prejudice is demonstrated. Non-compliance of Section 52A may thrashed out during trial. Trial court has ample power to ensure such compliance during trial, if required. In view of the aforesaid discussion and statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioner.

4. Application for bail is, thus, rejected.

5. Observations made by us are tentative and for the purpose of disposal of the bail application. They shall not have binding effect during trial which shall be decided independently and in accordance with law.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)