

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

03.04.2024
Court No.01
Item No.48
Avijit Mitra

CRM (NDPS) 140 of 2024

In Re:- An application for bail under section 439 of the
Code of Criminal Procedure;
And

In Re: Gopal Roy

...Petitioner.

Mr. Saptarshi Banik,
Mr. Ratan Banik
.... for the petitioner
Mr. Nilay Chakraborty, Ld. A.P.P.,
Mr. Abhijit Sarkar,
Mr. Kallol Nag
...for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Matigara Police Station Case No.258 of 2022 dated 21.02.2022 under Sections 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Banik, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. In support of such contention he has drawn our attention to the deposition of one Jiwan Roy and one Shipankar Roy. Jiwan Roy has, *inter alia*, stated that ‘*the police took me to Police Station on the pretext of giving me employment and obtained my signatures at the Police Station. I do not know*

any incident involved in this case’ and Shipankar Roy has, inter alia, stated that ‘I do not know anything about this case. I wrote my signatures on the papers on which something was written, but I cannot say what was written on the papers as I do not know how to read and write.’

He submits that Jiwan Roy’s name was inserted in column 10 of the chargesheet and Jiwan Roy and Shipankar Roy were the seizure witnesses, as would be explicit from the seizure list. In the said conspectus further detention of the petitioner is not necessary and he may be enlarged on bail on any stringent condition.

Mr. Chakraborty, learned Additional Public Prosecutor appearing for the State opposes the petitioner’s prayer and submits that the rigors of Section 37 of the NDPS Act are clearly attracted and as such the petitioner’s prayer for bail needs to be refused. However, he could not dispute the fact that Jiwan Roy and Shipankar Roy were the seizure witnesses.

Prima facie, it appears that both the seizure witnesses had been declared hostile and there are glaring lacunae in the prosecution case which erodes its roots. The petitioner has been able to demonstrate with reasonable certainty that he is not guilty of the offence and has thus been able to overcome the rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court-in-Charge (under Narcotic Drugs and Psychotropic Substances Act, 1985), Siliguri with a further condition that he shall meet with the Officer-in-Charge, Matigara Police Station once a fortnight till conclusion of the trial. He shall also attend the learned trial Court on all the dates as fixed for hearing.

It is further directed that the petitioner shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

With the above observations and direction, the application for bail, being CRM (NDPS) 140 of 2024, is disposed of.

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

(Biswaroop Chowdhury, J.) (Tapabrata Chakraborty, J.)