

25.04.2024
SL No.70
Court No.1
(gc)
(rejected)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (NDPS) 166 of 2024

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Birpara Police Station Case No.183 of 2023 dated 12.12.2023 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of : **Roshan Lal**

- Petitioner.

Mr. Subrata Karmakar,
Ms. Madhumita Sarkar

....For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld.A.P.P.,
Mr. Kallol Nag

...For the State.

1. In support of the application for bail, the learned Counsel for the petitioner at the very outset draws the attention of this Court to Page 14 of the petition under consideration. Attention of ours is also drawn to Page 18 being the photocopy of the seizure list. It is argued that on conjoint perusal of the written complaint and the seizure list it would reveal that the provision of Section 42 (proviso 2) has not been complied with inasmuch as no grounds for entering after sunset at the premises in question have been mentioned in writing in the seizure list which is a mandatory requirement under the aforesaid provision of NDPS Act.

2. While opposing the prayer for bail, the learned Counsel for the State draws our attention to Paragraph 3 of the written complaint. It is submitted that from the said paragraph of the written complaint it would reveal that the entire matter was diarized and an email was sent to SDO, Alipurduar prior to entering into the premises in question wherefrom the contraband articles were seized after sunset.
3. The materials available in the case diary prima facie show that steps have been taken by the Investigating Officer in purported compliance of Section 42. However, the said compliance can be determined only in course of trial by the learned Trial Court while assessing the evidence adduced by the witnesses.
4. It is, however, submitted on behalf of the State that investigation has already been completed. Materials have been placed before us to substantiate that commercial quantity of contraband articles seized from the possession of the accused petitioner.
5. In view of such, we are of the considered view that the present accused petitioner is not successful in rebutting the statutory restriction under Section 37 of the NDPS Act.
6. Accordingly, the prayer for bail is considered and rejected.

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

(Soumen Sen, J.)

(Partha Sarathi Sen, J.)