

01.05.2024
Court No.01
Item No. 77

Allowed

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

CRM (NDPS) 190 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kharibari Police Station Case No. 36 of 2024 dated 10.02.2024 under Sections 21(c)/22(c) of the NDPS Act.

And

In Re: **Shubhan Alam**

Petitioner

Mr. Arjun Chowdhury
Mr. Pratusha Dutta Chowdhury
Ms. Riya Agarwal

For the Petitioner

Mr. Nilay Chakraborty, Id. APP
Mr. Sagnik Shankar Sikdar

For the State

1. In course of hearing, Mr. Arjun Chowdhury, the learned Counsel for the petitioner draws our attention to the photocopy of the arrest memo appearing at page 11 of the bail application. It is submitted that keeping in mind the infraction of mandatory rule by not getting signature of a member of a family of the accused or a respectable person of the locality in the arrest memo, the instant application for bail may be considered favourably. In support of his contention, Mr. Chowdhury, places reliance upon the case of *Chandra Bahadur Tamang vs. State of West Bengal* reported in *2023 SCC OnLine Cal 2160*.
2. The learned Counsel for the State opposes the prayer for bail stating that huge quantity of contraband was seized from the present accused petitioner at a

place where compliance of D.K. Basu's judgment (*D.K. Basu vs. State of West Bengal reported in (1997) 1 SCC 416*) is practically impossible to comply.

3. We have considered the rival submission of the learned Counsel for the State. We have also perused the materials as placed before us. It reveals that the alleged arrest was undertaken on the railway over bridge of Panitanky on 09-02-2024 at 17.25 hours. No plausible explanation has been given on the part of the prosecution as to what prevented the arresting officer to get signature either of a family member of the accused or of a respectable person of the locality in column no. 14 while arresting the accused.
4. Considering the parity of the case with case of *Chandra Bahadur Tamang* (supra), we find that the present accused petitioner is successful in diluting the statutory restriction under Section 37 of the NDPS Act.
5. In view of such, we are inclined to allow the prayer for bail of the present accused petitioner basically on the ground of parity.
6. Accordingly, the petitioner viz., **Shubhan Alam** shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court (NDPS Act), Siliguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall meet the Investigating Officer of this case thrice in a week till the conclusion of the investigation and the present accused petitioner shall not leave the territorial jurisdiction of Kharibari Police Station until further order by which such condition has been relaxed by the learned Trial Court, with a further direction that the present accused petitioner shall appear before the learned Court on

each date of substantive hearing subject to provision of Section 317 of the Code of Criminal Procedure.

7. The application for bail of the petitioner is allowed. CRM (NDPS) 190 of 2024 is, accordingly, disposed of.
8. 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.)