

AD-6
Ct No.01
Jalpaiguri
22.07.2024
B.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 248 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 19.06.2024 in connection with Jaigaon Police Station Case No. 110 of 2023 dated 25.04.2023 under Section 22(C)/25/29 of the NDPS Act, 1985.

And

In the matter of: MANGAL SARKAR @ GUDDU

...Petitioner

Mr. Sourav Ganguly,
Ms. Rishita Chakraborty,
Mrs. Deblina Roy

... for the petitioner

Mr. Kallol Acharjee,
Mr. Tapan Bhattacharjee,
Mr. Kallol Nag

... for the State

1. Learned counsel for the petitioner points out that there was palpable discrepancy in the process of arrest inasmuch as one Monindra Nath Barman' name finds place in the Memo of Arrest as signatory and only independent witness whereas his name does not find place in the charge sheet/witness list. It is further contended that the recovery was allegedly made from a private scooter which cannot be counted as 'public place'. Learned counsel places reliance on a coordinate Bench judgment of this Court in CRM (NDPS)

546 of 2023 where the learned Single Judge was considering *Boota Singh v. State of Haryana* reported at 2021 SCC Online 324 for the proposition that a private vehicle cannot be treated to be public conveyance or come within the expression “public place’ as explained in Section 43 of the NDPS Act.

2. It is contended that such discrepancies create sufficient doubt on the applicability of Section 37 in case of the petitioner.
3. Learned counsel appearing for the prosecution submits that charge-sheet has been filed and the contentions now sought to be raised by the petitioner can very well be thrashed out at trial. It is submitted that there is no bar for calling a further witness during trial.
4. Undoubtedly, learned counsel for the prosecution is justified in submitting so. However, we find from the Memo of Arrest that Monindra Nath Barman, as rightly pointed out by the petitioner, was the purported independent witness who signed in the Memo of Arrest whereas his name does not find place anywhere else till date as a witness.
5. Hence, some doubt is cast insofar as whether sufficient case has been made out against the petitioner within the ambit of the NDPS Act to justify further confinement of the petitioner throughout the period of trial.

6. In such view of the matter, there is sufficient *prima facie* doubt as to whether the petitioner has committed the offence at all and also apparent that there is little chance of the petitioner committing such offence if enlarged on bail. Moreover, certain stringent conditions are contemplated to be put in this order to obviate such acts by the petitioner.
7. Accordingly, CRM (NDPS) 248 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Additional Sessions Judge, 1st Court (NDPS Act), at Jalpaiguri.
8. The petitioner shall attend each and every date of trial and shall not leave the territorial jurisdiction of the trial court throughout the period of trial and shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)