

JPD-12
Ct No.01
22.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 255 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. 361 of 2023 dated 20.12.2023 under Section 22(c) of the NDPS Act.

And

In the matter of: **Bhuwani Shanker Sharma @ Bhawani**

.... petitioner

Mr. Jaydeep Kanta Bhowmik
Mr. Sayantan Bhowmik
Mr. Subham Kumar
Ms. Rikta Sarkar

... for the petitioner

Mr. Nilay Chakraborty
Mr. Ujjwal Luksom
Ms. Namrata Das

... for the State

1. Learned counsel for the petitioner points out that in the Memo of Arrest, the sole signatory in column-10 is a personnel of the Railway Protection Force (RPF), which itself vitiates the process of arrest.
2. It is contended by learned counsel for the respondents that it is well-settled that in the event no witness is available at the relevant juncture, anyone can act as witness.
3. The arrest was effected around 10.30 p.m. in the New Jalpaiguri Railway Station (NJP) and as such there was dearth of any other witness.
4. We find it to be rather a difficult pill to swallow that at 10.30 p.m., in a busy Railway Station such as NJP, there was no other

available witness than a member of the RPF team to sign as the sole independent witness.

5. Although learned counsel for the respondents seriously opposes the prayer for bail, we are of the opinion that the process of arrest being prima facie vitiated, the presumption under Section 37 has to be relaxed.
6. Accordingly, CRM (NDPS) 255 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Judge (NDPS Act) at Siliguri.
7. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend on each and every date of trial.
8. Further, the petitioner 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.)