

AD-7
Ct No.01
Jalpaiguri
23.07.2024
B.Pal

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

CRM (NDPS) 267 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 11.07.2024 in connection with Pradhan Nagar Police Station Case No. 734 of 2023 dated 16.09.2023 under Section 21(c), 22(c), 27A and 29 of the NDPS Act, 1985.

And

In the matter of: TAJIBUR RAHAMAN

...Petitioner

Ms. Rima Sarkar,
Ms. Sidhi Sethia,
Ms. Suparna Paul

... for the petitioner

Mr. Nilay Chakraborty,
Ms. Sukanya Adhikary

... for the State

1. This matter is being taken up in conjunction with CRM(NDPS) 330 of 2024 and CRM(NDPS) 331 of 2024, in view of all the three petitioners being co-accused persons with regard to the same offence.
2. At the outset, serious objection is taken to the prayer for bail by the State.

3. It transpires upon hearing learned counsel for the parties there are at least two strong and one weaker mitigating circumstances to vitiate the strong rigours of Section 37 of the NDPS Act, which are as follows:

- (i) The FSL report is dated October 12, 2023 whereas the inventory of the samples was done subsequently on October 19, 2023, which tantamounts to putting the cart before the horse, which is sufficient to upset the apple-cart of the prosecution.
- (ii) None of the seizure witnesses formed a part of the charge-sheet witnesses, which is also another circumstance which casts serious doubt on the entire process of arrest and seizure.
- (iii) Thirdly, learned counsel has relied on a judgment of a learned Single Judge of the Allahabad High Court in the case of *Phool Chand Ali vs. Union of India* where the Court relied on Standing Order No.01 of 1989 dated June 13, 1989 in terms of which in case of seizure of a single packet/container, one sample in duplicate shall be drawn. As per Clause 2.4 of the Standing Order, normally it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one packet/container. Here, it was not complied with.

4. After giving serious consideration to the legal points involved, we were initially of the opinion that by itself, violation of Clause 2.4 of the Standing Order might not vitiate the process of arrest and seizure standing in isolation, since the expressions used therein are “normally” and “advisable”.
5. However, in conjunction with the other two serious contraventions involved here as indicated in points (i) and (ii) above, we are of the considered opinion that the presumption of Section 37 of the NDPS Act cannot be attached to the present case.
6. In such view of the matter, we are inclined to grant bail to the petitioner.
7. Accordingly, CRM (NDPS) 267 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bond of Rs. 20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the Special Court (NDPS Act), Siliguri.
8. The petitioner shall not leave the territorial jurisdiction of the trial court throughout the period of trial and shall attend each and every date of trial. That apart, the petitioner shall not commit any offence akin to that for which he has been accused.
9. Further, the petitioners 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.)