

JPD-03
Ct No.01
24.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 268 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with Jaigaon Police Station Case No. 252 of 2023 dated 16.10.2023 under Sections 21(c)/25/29 of the NDPS Act.

And

In the matter of: **Som Bahadur Lama**

.... petitioner

Mr. Arjun Chowdhury
Ms. Pratusha Dutta Chowdhury
Ms. Riya Agarwal
Mr. Koushik Kr. Karu
Ms. Tulip Saha

... for the petitioner

Mr. Nilay Chakraborty
Ms. Sukanya Adhikary

... for the State

1. The petitioner seeks bail primarily on the ground that the second proviso to Section 42(1) of the NDPS Act was not complied with.
2. It is submitted that although a person signed in the Memo of Arrest, he/she does not find place as a signatory in the seizure list.
3. It is contended that in the present case, there is nothing on record to indicate that there was any written communication by the Arresting Officer giving information in compliance with the second proviso to Section 42(1) to his immediate superior officer and as such, the process of arrest is vitiated.

4. Learned counsel cites a judgment of this court dated July 23, 2024 where the court relied on the proposition laid down by the Supreme Court in *Karnali Singh vs. State of Haryana* reported at (2009) 8 SCC 539, that it would be a clear violation of Section 42 of the NDPS Act where the Police officer had sufficient time to take action but fails to record the information received in writing or send a copy thereof to the official superior.
5. Further, in *Sarija Banu alias Janarthani alias Janani vs. State* reported at (2004) 12 SCC 266, it was laid down by the Supreme Court that compliance of Section 42 is mandatory and is a relevant factor while considering an application for bail.
6. Learned counsel for the State submits by relying on the FIR that the Arresting Officer intimated to his superior over the telephone immediately and sent a requisition to SDO Alipurduar for deputing one Executive Magistrate to witness the search and seizure.
7. It is submitted, however, on instruction, that there was no intimation in writing regarding the grounds for the belief of the officer that a search warrant or authorization could not be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender.
8. In terms of the mandate laid down by the judgments of the Supreme Court as indicated above, we are inclined to grant bail to the petitioner in view of the mandatory provisions of Section 42(1), second proviso having not been complied with.

9. However, before parting with the matter, we express our dissatisfaction as to non-sensitization of the police officers with regard to mandatory compliance of the second proviso to Section 42(1) of the NDPS Act.
10. We take judicial notice of the fact that in several NDPS cases, we find that although the raiding party took pains and serious trouble to nab the alleged offenders and catch them red-handed, merely due to a technical slip of non-compliance of Section 42(1), second proviso, read with Section 42(2), the courts are obliged to grant bail and/or the trial also suffers in certain cases.
11. As such, it is expected that the concerned police officials shall be duly sensitized, if necessary, by organizing workshops and classes, as regards the due requirements of law, particularly in strict statutes such as the NDPS Act to ensure that the mandate of law is duly complied with.
12. A copy of this order be immediately communicated to the IG, North Bengal as well as Commissioner of Police, Siliguri to take immediate action in terms of the above direction.
13. Insofar as the present case is concerned, we are inclined to grant bail to the petitioner in the light of the observations made in the preceding paragraphs.
14. Accordingly, CRM (NDPS) 268 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 Sessions Judge, Alipurduar.

- 15.** The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
- 16.** 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.)