

AD-9
Ct No.01
Jalpaiguri
23.07.2024
B.Pal

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

CRM (NDPS) 269 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 Jaigaon Police Station Case No. 265 of 2023 dated 03.11.2023 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of: DEEPAK SHA @ SAH

...Petitioner

Mr. Sourav Ganguly,
Ms. Deblina Ray,
Mr. Gopal Roy,
Ms. Rishita Chakraborty,
Mr. Kanaj Chakraborty

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Tapan Bhattacharjee
Mr. Dhiman Sil

... for the State

1. Learned counsel for the petitioner points out that the Memo of Arrest contains the signature of a constable in the column meant for independent witness, who was apparently a part of the raiding party.
2. It is further pointed out that the arrest was effected in a busy crossing at 16:35 hours, where and when there could be no dearth of independent witnesses.

3. Learned counsel for the State controverts the prayer for bail and submits that in the present case the search and seizure took place immediately before the arrest and the seizure list contains the signature of independent witnesses and as such, it cannot be said that the process of arrest was vitiated.
4. We fail to understand as to why, if the search and seizure took place prior to the arrest, the Memo of Arrest does not contain the signature of any independent witness. Particularly keeping in view the busy nature of the area where arrest was effected and the hours at which such arrest was made, we are of the opinion that the process of arrest itself is vitiated due to absence of signature of any independent witness in the Memo of Arrest.
5. Learned counsel for the State also states that the constable may also be treated to be 'respectable person' and considered as an independent witness. We do not have any doubt about the respectability of a constable or for that matter, even the accused, but we are of the opinion that one cannot be the judge of one's own cause. As such, there being serious doubt in the process of arrest, we are not inclined to attach the rigours of Section 37, NDPS Act.
6. Accordingly, CRM (NDPS) 269 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 Special Court (NDPS Act), Alipurduar.

7. 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.
8. 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.)