

JPD-07
Ct No.01
25.07.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 284 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **New Jaigaon** Police Station Case No. **06** of **2024** dated **05.01.2024** under Sections **21(c)/29** of the **NDPS Act, 1985**.

And

In the matter of: **Kabir Biswa @ Biswas**

.... petitioner

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

... for the petitioner

Mr. Saikat Chatterjee,
Mr. Dhiman Sil

... for the State

1. Learned counsel for the petitioner contends that even as per the FIR and the written complaint, the contraband articles were seized from two persons including the petitioner. Learned counsel for the petitioner painstakingly takes the court through the written complaint and argues that the same refers to the seizure being made from a single person. It is expressed in the third paragraph of the written complaint that being confirmed by source, the raiding party encircled “the person who” on being asked identified “himself” as “the person” noted above.

2. Thus, the underlying refrain of the said charge sheet was that the seizure was effected from one of the two co-accused persons, without naming as to from whom it was recovered.
3. Furthermore, it transpires from the FIR and the written complaint that the contraband articles were found from a single backpack. It is argued that a single backpack under normal circumstances has to be carried by a single person. Accordingly, it is submitted that palpable doubt is cast as to which of the two co-accused persons was the person from whom the contraband articles were seized.
4. Learned counsel appearing for the State vehemently opposes the prayer for bail and submits that August 09, 2024 has already been fixed for framing of charges. At this nascent stage, it is argued, it cannot be contended or found beyond doubt as to the role of the petitioner in the offence. As such, it is submitted that the bail ought not to be granted.
5. We are of the opinion that individual liberty as enshrined in Article 21 of the Constitution of India is by default available to citizens, unless the strict rigours of a particular restraining statute can be applied to them. Section 37 of the NDPS Act applies only in cases where there is a clear-cut reflection in the records of involvement of an accused person in the alleged offence.
6. Even from the FIR, read in conjunction with the written complaint, we find that the recovery was made from a single backpack, meaning thereby that the same must have been carried

by a single person. Also, in the written complaint, the reference is entirely to a single person, thereby mitigating the circumstances for both. Since we are unsure from the FIR and the charge sheet as to whether the contraband articles were recovered from the petitioner himself or the other co-accused, we are unable to attach the bar under Section 37 of the NDPS Act to the petitioner.

- 7.** Accordingly, CRM (NDPS) 284 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 Court (NDPS Act) at Alipurduar.
- 8.** 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.
- 9.** 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.)