

JPD-5
Ct No.01
29.07.2024
S. Bag

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

CRM (NDPS) 298 of 2024

In Re: - An application for bail under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Matigara Police Station Case no. 1071 of 2021 dated 21.9.2021 under Section 21(c) of the N.D.P.S. Act, 1985.

And

In the matter of: Bapi Singha

....petitioner

Ms. Moushumi Das, Adv.

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... for the petitioner

Mr. Abhijit Sarkar, Adv.

Ms. Namrata Das, Adv.

... for the State

1. Learned counsel for the petitioner contends that similar prayer of the petitioner was rejected on April 22, 2024. After the said date, however, two of the prosecution witnesses turned hostile. One of the members of the raiding party, being PW5, also after the date of the previous rejection, stated in his cross examination that no videography of the search and seizure was done.
2. Learned counsel for the State seriously opposes the prayer for bail and argues that on two prior occasions, the petitioner's bail prayers were rejected.

3. It is further pointed out that although two witnesses might have turned hostile, the matter is one which is the subject matter of trial. It is further contended that in view of the nature of the contraband article, which is brown sugar, the prayer for bail should be rejected by applying Section 37 of the NDPS Act.
4. We find from the materials on record that there is substance in the contention of the petitioner, inasmuch as serious doubt has been cast on the role of the petitioner in the recovery process itself due to the hostility of two prosecution witnesses and one of the members of the raiding party itself having stated in cross-examination that the incident was not videographed, which is mandatory in such proceedings.
5. Moreover, we do not find any further necessity to retain the petitioner in custody as no case has been made out for custodial trial.
6. Since the rigours of section 37 of the NDPS Act are diluted in view of the above circumstances, we are inclined to grant bail to the petitioner.
7. In such view of the matter, CRM (NDPS) 298 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 learned Special Court (NDPS Act) at Siliguri.

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.)