

AD-15
Ct No.01
Jalpaiguri
25.07.2024
SP

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

CRM (NDPS) 302 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Reang Police Station Case No. 66/2023 dated 28.09.2023 under Section 22(c) of the NDPS Act, 1985.

And

In the matter of: ARJUN TAMANG AND ANR

. . . .for the petitioners

Mr. Dhiraj Lakhatia, Adv.
Ms. Radhika Agarwal, Adv.
Mr. Satyajit Paul, Adv.
Ms. Meghna Joshi, Adv.
Ms. Khushi Kundu, Adv.

... for the petitioners

Mr. Kallol Acharjee, Adv.
Mr. Aniruddha Biswas, Adv.

... for the State

1. The petitioners seek bail on several grounds of infraction of law, which according to the petitioners vitiates the presumption of correctness attached to arrest and seizure, thereby obviating the rigours of Section 37 of the NDPS Act.
2. First, there was a gross violation of Rule 3(4) as well as Rule 14 of the NDPS Rules 2022 inasmuch as in none of the prosecution documents, it is found that the weight or quantity of the alleged contraband articles was measured.

3. Secondly, Section 104 of the Code of Criminal Procedure, read with Section 51 of the NDPS Act, have been violated since in the present case, both the seizure witnesses hail from a distant locality and do not comply with the legal requirement that they have to be from the locality where the arrest was effected.
4. Thirdly, it is also argued that the provisions of the second proviso to Section 42(1) and Section 42(2) of the NDPS Act were violated, inasmuch as there is no intimation on record to the superior officer of the Arresting Officer indicating the reasons in writing as to why warrant of arrest could not be obtained prior to effecting the arrest.
5. Learned counsel for the State opposes the prayer for bail. It is contended that there was no violation of Section 42 of the NDPS Act, since the provisions of Section 43 are attracted inasmuch as the petitioners were speeding on a vehicle, upon which they were stopped and searched. Subsequently, it was found that the contraband articles were placed between the two riders.
6. Although there might have been some doubt regarding the violation of Section 42 which can very well be thrashed out at the trial, insofar as the other violations narrated above are concerned, we are of the opinion that there is sufficient infraction of the due process of law in the procedure of search

and seizure as well as arrest to obviate the rigours of Section 37 of the NDPS Act.

7. In such circumstances, CRM (NDPS) 302 of 2024 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall furnish bond of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Special Court (NDPS Act) at Kalimpong. The sureties may be common in respect of both the petitioners.
8. The petitioners 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 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.)