

AD-26
Ct No.01
Jalpaiguri
25.07.2024
B.Pal

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

CRM (NDPS) 322 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 18.07.2024 in connection with Birpara Police Station Case No. 171 of 2023 dated 27.11.2023 under Section 20(b)(ii)(c) of the NDPS Act, 1985.

And

In the matter of: KRISHNA MAHANTA

...Petitioner

Mr. Aniruddha Biswas,
Ms. Arijit Ghosh,
Mrs. Swarnali Ghosh,
Ms. Angana Rakshit

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Ujjwal Luksom,
Ms. Namrata Das

... for the State

1. Learned counsel for the petitioner contends that as per the seizure list, recovery was made from different individual bags from three different co-accused ladies, including the petitioner. It is submitted that even going by the seizure list, the quantity of the articles in each of the bags falls at the best within the zone of intermediate quantity, thus, not attracting the rigours of Section 37 of the NDPS Act.
2. Learned counsel submits that it is nowhere mentioned in the seizure list or the FIR that the possession was joint and as

such, it has to be presumed that the individual seizures made from each of the persons do not come within the purview of commercial quantity. That apart, in the seizure list it is not even specifically mentioned as to which bag was recovered from which person.

3. Learned counsel appearing for the State opposes the prayer of bail and argues that the very fact that the individual names of the persons carrying the bags are not appearing in the seizure list against each bag indicates that the recovery was from joint possession of the said persons. Moreover, since the seizure list is single and the possession is joint, just because the expression "joint" is not appearing in the same, it cannot be presumed that the recoveries were individual.
4. However, we find sufficient substance in the contention of the petitioner.
5. From the FIR and the seizure list, it is evident that the contraband articles were recovered from several different bags carried by the three co-accused persons, thus indicating on the face of it that the three co-accused persons were carrying different bags. In the unlikely event that all bags were being carried by a single person, the same would have been mentioned in the complaint, FIR and the seizure list with an elaboration as to the nature of involvement of the other co-accused persons who were not carrying the bags.

6. Unless it was the case of the prosecution that the three ladies were going hand in hand or were hugging each other, there could not be any possibility of the possession being “joint”, particularly since the possession came into effect from four separate bags carried by the three ladies. Thus, although a single seizure list has been filed, the same does not mitigate the fact that the individual recoveries even as per the seizure list were within the zone of intermediate quantities in each of the bags, thus, not attracting the provisions of Section 37 of the NDPS Act.
7. As such, considering the fact that the petitioner is in custody since last November, that is, for 241 days and she is a lady, this Court is inclined to grant bail to the petitioner.
8. Accordingly, CRM (NDPS) 322 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), Session Judge, Alipurduar.
9. 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.
10. 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.)