

JPD-23
Ct No.01
29.07.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 355 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with **Phansidewa** Police Station Case No. **496** of **2022** dated **11.11.2022** under Section **20(b)(ii)(c)** of the **NDPS Act, 1985**.

And

In the matter of: **Biswajit Das**

.... petitioner

Mr. Anirban Banerjee,
Ms. Chanda Jha,
Ms. Rishita Chakraborty,
Mr. Soumyajit Laskar

... for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Arjun Chowdhury

... for the State

1. Learned counsel for the petitioner canvasses primarily two grounds for grant of bail.
2. First, it is contended that the petitioner is in custody for about 627 days.
3. Secondly, it is argued that there is no explanation whatsoever as to both the independent witnesses who signed in the memo of arrest and seizure list being residents of the State of Bihar, which is nowhere near the place of the alleged occurrence.
4. It is submitted that the well-settled law on the issue is that in the event local residents cannot be obtained, there has to be

categorical explanation as to why such witnesses could not be found.

- 5.** In the present case, it is argued that in the written complaint, there is no explanation whatsoever regarding the same.
- 6.** Learned counsel for the prosecution opposes the prayer for bail.
- 7.** It is argued that out of a total of 13 witnesses, 4 have already been examined and the trial can be expedited.
- 8.** It is also contended that the written complaint, which was ultimately registered as the FIR, clearly denotes that the raiding party had requested the two bus drivers who were driving the bus alternatively, from which vehicle the contraband was recovered, to sign as independent witnesses.
- 9.** As such, the same is sufficient explanation for local witnesses not having been taken as independent witnesses.
- 10.** After a careful consideration, with regard to second ground canvassed by the petitioner, we are unable to accept such proposition in the circumstances of the present case.
- 11.** It is otherwise well-settled that in normal circumstances, the raiding party has to obtain the signature of independent witnesses who are residents of the locality and in the absence of the same, specific explanation and the compliance of the appropriate procedure of law has to be undertaken by writing to the Superior Officer the reason as to non-availability of the same.
- 12.** However, we are also of the opinion that in cases such as the present, where the recovery is made from a moving vehicle, the

concept of “local witnesses” might be diluted, since the location from which the recovery was made was not static and, as such, the term “local witnesses” may also encompass other co-passengers of the concerned vehicle. In the present case, since the two alternative drivers of the bus were used as independent witnesses, we do not find at this stage for the same *per se* to be a mitigating circumstance under Section 37, NDPS Act.

- 13.** However, the first ground made out by the petitioner is much stronger inasmuch as the long incarceration of 627 days itself is a mitigating circumstance and, as such, we are of the opinion that in the absence of any case of further custodial trial having been made out, the rigours of Section 37 of the NDPS Act has since long been diluted.
- 14.** Accordingly, CRM (NDPS) 355 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), Siliguri.
- 15.** 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.

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.)