

JPD-76
Ct No.01
1.8.2024
S. Bag

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

CRM (NDPS) 388 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 and 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Siliguri Police Station Case No. 430/24 dated 06.05.2024 under Section 21(C)/22(C)/25/29 of the N.D.P.S. Act, 1985.

And

In the matter of: Md. Samim Sk.

....petitioner

Mr. Prajhadepta Roy, Adv.
Ms. Sohini Kundu, Adv.
Mr. Debojyoti Goswami, Adv.

... for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Kallol Nag, Adv.

... for the State

1. Learned counsel for the petitioner places reliance on a coordinate Bench judgment as well as judgments of the Supreme Court to argue that in view of violation of Section 42(2) of the NDPS Act, the present petitioner ought to be

granted bail irrespective of the rigours of Section 37 of the NDPS Act, which cannot be applied to the petitioner. It is also submitted that as per the allegations, four persons were packed in a small vehicle, the make being 'Maruti Alto'. Also, the ownership of the vehicle has not been ascertained. It is further argued that at least the driver of the vehicle could not have been carrying a back pack, as the allegation is that the four persons in the vehicle were carrying an equivalent number of backpacks.

2. Learned counsel for the state opposes the prayer for bail and submits that the provisions of Section 42(2) of the NDPS Act have been complied with by a communication by way of email.
3. It is also submitted that the charge-sheet has not yet been filed and as such, it would be premature for the court to come to a conclusion that Section 42(2) has not been complied with, even the FSL report is yet to be obtained.
4. Thus, it is submitted that at this premature stage, bail ought not to be granted to the petitioners.
5. From the arguments advanced, we do not find at this stage to come to any conclusive finding that there is any contravention of the process of law in the process of search and seizure. Moreover, the seizure was made as recently as on May 6, 2024 and it would be absolutely premature at this

inchoate stage to observe that the rigours of section 37 of the NDPS Act are not applicable to the petitioner.

6. Hence, there is no scope for grant of bail to the petitioner at this early stage,
7. Accordingly, CRM (NDPS) 388 of 2024 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)