

JPD-58
Ct No.01
02.08.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 393 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with Madarihat Police Station Case No. 44 of 2024 dated 03.04.2024 under Sections 21(c)/25 of the NDPS Act.

And

In the matter of: **Babul Sarkar @ Bhabesh Sarkar**

.... Petitioner

Mr. Arnab Saha

... for the petitioner

Mr. Aditi Shankar Chakraborty
Mr. Kallol Acharjee
Mr. Tapan Bhattacharjee

... for the State

1. Learned counsel for the petitioner argues that the petitioner is a septuagenarian and has been running a pharmaceutical shop from which the recovery of the alleged contraband articles was made.
2. Learned counsel also seeks to impress upon the court that there was infraction of Section 52 of the NDPS Act and also that the Gazetted Officer himself gave notice to the petitioner, thereby

obviating the statutory option being given to the petitioner between the Gazetted officer and the Magistrate.

- 3.** That apart, it is argued that the provisions of several other Sections of the NDPS Act were violated.
- 4.** Learned counsel for the State seriously opposes the prayer for bail and argues that the licence to run the medical shop as annexed to the petition itself indicates that it has lapsed.
- 5.** Learned counsel for the State further submits that Section 8 read with Section 80 of the NDPS Act are sufficient to implicate the petitioner.
- 6.** We find, as rightly pointed out by learned counsel for the petitioner in rejoinder, that the current licence annexed at page 29 of the petition shows that it is still valid. Hence, the argument that the licence has expired is not correct.
- 7.** Moreover, Section 80 read with Section 8 of the NDPS Act does not cut much ice in the matter and does not have a germane bearing on the issue.
- 8.** Section 80 merely provides that the provisions of the NDPS Act or the Rules made thereunder shall be in addition to and not in derogation of Drugs and Cosmetics Act, 1940 or the Rules made thereunder.
- 9.** There is no controversy on such count in the present matter at all.
- 10.** Section 18, NDPS Act prohibits certain operations including possession and sale of prohibited narcotic and psychotropic substances.

- 11.** However, the exception culled out therein is for medical or scientific purposes and in the manner and to the extent provided by the provisions of the Act.
- 12.** Considering the above provisions, there is sufficient doubt as to whether there was any involvement of the petitioner in the offences alleged, as he has been running a pharmaceutical shop with valid licence when the seizure was made.
- 13.** Also considering the advanced age of the petitioner, we hold that the rigours of Section 37 of the NDPS Act do not operate against the petitioner.
- 14.** Keeping in view such circumstances, we are inclined to grant bail to the petitioner.
- 15.** Accordingly, CRM (NDPS) 393 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 Learned Judge, Special Court under the NDPS Act cum Additional Session Judge at Alipurduar.
- 16.** 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.
- 17.** 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.)