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Calcutta High Court
In the Circuit Bench at Jalpaiguri

CRM (NDPS) No. 448 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 23.12.2022 in connection with Cooch Behar Kotwali Police Station Case No. 286 of 2022 dated 23.03.2022 under Sections 21(c) of the NDPS Act, 1985.

In the matter of : Md. Mirmoizuddin Rahaman
@ Md. Maijuddin Rahaman
@ Babu and another
... Petitioners

Mr. Hillol Saha Podder,
Ms. Mousumi Das
...for the Petitioners

Mr. Aditi Shankar Chakraborty,
Mr. Biswarup Roy
.....for the State.

Learned counsel for the petitioners points out, by placing reliance on several judgments of coordinate Benches of this Court annexed to the writ petition, that there were several crucial discrepancies in the documents of seizure. First, it is submitted that Section 41B of the Code of Criminal Procedure was not complied with in letter and spirit inasmuch as no responsible person of the locality was taken as a witness. Secondly, the only signatory, who is witness to the seizure list, was a member of the raiding party. No independent witness's signature was taken on the said list,

although the place of alleged occurrence was well populated and the time of arrest was much prior to midnight.

Learned counsel for the State submits that the complaint, on the basis of which the F.I.R. was registered, clearly indicates that the raiding party went along with a portable printer and investigation kits, which itself indicates that the mere fact of the seizure list being a computer printout cannot be held to be suspect.

Moreover, it is submitted that substantially the law was complied with and, as such, the State opposes the prayer for bail.

However, upon careful consideration of the judgments cited and the well-settled legal position that the provisions of Section 41B of the Code of Criminal Procedure have to be complied with and that there cannot be any discrepancy inherent in the seizure list in order to raise a proper presumption under Section 37 of the N.D.P.S. Act, we are of the opinion that the petitioners are entitled to bail.

Accordingly, CRM (NDPS) No. 448 of 2022 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall individually furnish bonds of Rs. 10,000/- (Rupees Ten Thousand) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court, (under NDPS Act), Cooch Behar. The sureties may be common for both the

petitioners. The petitioners shall not leave the territorial jurisdiction of the trial court during the entire period of trial. Moreover, 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 the court or to any police officer or tamper with evidence in any manner whatsoever.

CRM (NDPS) No. 448 of 2022 is, accordingly, disposed of.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)