

**26.10.2023**  
Court No.8  
Item. 06  
(Suvendu/Sandip)

**CRM(NDPS) 1770 OF 2023**

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with STF Police Station Case No. 32 of 2022 dated 14.10.2022 under Sections 15(c)/ 29 of the NDPS Act, 1985 pending in the Court of the learned Judge –I, NDPS Act, City Sessions Court, Calcutta being NDPS Case No. 38 of 2022.

And

In the matter of: Faiyaz Alam @ Fayaz Alam

. . . . .Petitioner.

Mr. Sudip Deb  
Mr. Joy Chakraborty  
Mr. Sandip Dinda  
Ms. Ipsita Ghosh

For the Petitioner.

Mr. Rafiqul Islam  
Mr. Shashanka Shekhar Saha

For the State.

1. Upon perusing the material placed before the Court, Column 10 of the Memo of Arrest does not contain any signature and is a blank space. A blank space in Column 10 violates Section 41(b) of The Code of Criminal Procedure, 1908 which was inserted in the Act after the Supreme Court judgment in *D. K. Basu Vs. State of West Bengal, (1997) 1 SCC 416*. The judgment of the Supreme Court in *D.K. Basu* clearly indicates the procedure to be followed at the time of arrest and one independent witness must be present at the time of arrest.
2. Section 41(b) mandates having the Memorandum of Arrest attested by at least one witness who is a member of the family of the person

arrested or a respectable person of the locality where the arrest is made. This has not been done in the present case.

3. There are several decisions which have followed Section 41(b) to allow the prayer for bail.
4. We are hence of the view that the above facts are sufficient to rebut the statutory restriction under Section 37 of the NDPS Act.
5. The prayer for bail is accordingly allowed.
6. We accordingly direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand only) with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Metropolitan Magistrate Court at Calcutta. The petitioner shall not induce witnesses or influence them or tamper with evidence. The petitioner shall report to the I.O. of the concerned Police Station once every fortnight and shall not leave the local limits of the local police station without leave of the learned Metropolitan Magistrate Court at Calcutta. The petitioner shall also make himself available for the trial as and when the petitioner is required.
7. CRM(NDPS) 1770 of 2023 is accordingly allowed and disposed of in terms of the above.

(BIBHAS RANJAN DE, J.)

(MOUSHUMI BHATTACHARYA, J.)

