

11.10.2023

SL. 12
Court No. 29
Suvayan
(Allowed)

C.R.M. (A) 3002 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Kaliachak** Police Station Case No. **03 of 2023** dated **02.01.2023** under Sections **27A/29** of the NDPS Act.

And

In the matter of: **Mostak Biswas**

....petitioner.

Mr. Krishnendu Bhattacharya

Mr. Priyankar Ganguly

...for the petitioner.

Mr. Sanjoy Bardhan

Mr. Palash Chandra Majhi

...for the State.

1. Heard learned Counsel for both the parties.
2. It is fairly submitted by Mr. Bardhan, learned Counsel for the State that though alleged contraband was seized behind the house of the father of the petitioner the chemical examination report is to the effect that the materials seized in the case does not come under the purview of the NDPS Act. It is further submitted by learned Counsel for the State that the chemical report has been prepared since April, 2023 but the same has been collected by the I.O. only in 13th September, 2023.
3. On being dissatisfied of the finding of the chemical examiner, a petition has been filed by the I.O. for re-sampling and further chemical examination.
4. Though, it is submitted by the I.O. who is present in the Court that necessary order has been passed by the learned Trial Court, such order is not there in the C.D.
5. In NDPS Act there is no provision for re-sampling but Hon'ble Supreme Court in the case of **Thana Singh Vs. Central Bureau of Narcotics** reported in **(2013) 2 SCC 590** has allowed re-sampling on fulfillment of certain conditions. The first two conditions, we find to be absent in the present case.

6. Regard being had to the stage of the proceeding and especially the finding of the chemical examiner, we are constrained to hold the rigors of Section 37 of the NDPS Act is not applicable to the present case.
7. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of allegation, nature of evidence and substantial progress in investigation, it is directed that the petitioner shall be released on bail by the Arresting Officer in the event of his arrest in the aforesaid P.S. case on such terms and conditions as deemed just and proper in the facts and circumstances of the case.
8. The concerned Arresting Officer is hereby directed to act upon the server copy of this order.
9. Within 21 days from today the petitioner shall appear before the I.O. alongwith a server copy/certified copy of this order. If server copy is supplied, learned I.O. shall act upon that.
10. Accordingly, the prayer for the anticipatory bail is allowed.
11. The personal appearance of the I.O. is dispensed with and is directed to be careful in future so far as cooperation with the State Counsel is concerned.
12. Department is directed to forward a copy of this order to the the S.P. of District – Malda and I.C. of Kaliachak P.S.
13. The application being CRM (A) 3002 of 2023 is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

