

**01.11.2023**  
**Court No.8**  
**(D/L 06)**  
**(AK)**

**CRM (NDPS) 1777 OF 2023**

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 25.10.2023 in connection with STF Police Station Case No. 17 of 2022 dated 23.06.2022 under Sections 20(b)(ii)/22(c)/29 of the N.D.P.S. Act, 1985.

And

In the matter of: **Aryaman Poddar**

**... Petitioner.**

Mr. Kishore Dutta  
Mr. A. agarwala  
Ms. A. Mukherjee

... for the petitioner.

Mr. Arijit Ganguly  
Mr. Sanjib Kumar Daw

... for the State.

1. Learned senior counsel appearing for the petitioner points out several purported discrepancies in the process of search and seizure, which would alleviate the rigours of the NDPS Act as per submission of the petitioner.

2. First, it is contended that the petitioner was apprehended within the jurisdiction of the Beniapukur Police Station and as such, the Special Judge NDPS at Alipore ought to have been entrusted with the enquiry and trial. However, the same is being done before the STF. Secondly, it is argued that there is variation between the seized substances and those sent for chemical examination.

3. Thirdly, it is argued that the provisions of Section 42 of the NDPS Act have been violated, since the sergeants of the Kolkata Police who conducted the process of search and seizure are not empowered under the relevant statute to do so.

4. Learned senior counsel for the petitioner places reliance on the Notification under the said statute bearing no.1573-Ex. dated November 5, 1985 in that regard.

5. Learned counsel for the State vehemently opposes the prayer for bail. It is argued that the points contended at this juncture are not the subject matter of consideration in an application for bail but are the subject matter of trial.

6. Secondly, learned counsel places reliance on a Notification dated February 14, 2013 published in the Official Gazette on February 18, 2013 whereby territorial jurisdiction for the relevant area was conferred on the concerned police station.

7. Learned counsel also places reliance on a Notification dated November 16, 2018, which stipulates that the “willing sergeants” of the Kolkata Police have been empowered to investigate cases under the Code of Criminal Procedure. As such, the arguments of violation of the statute are not tenable.

8. Next it is argued that the variation between the samples seized and those sent for chemical examination is reasonable, keeping in view the fact that the contraband article is in the nature of a recreational drug which may change colour due to exposure to air.

9. Upon considering the submissions of parties, we are of the considered opinion that the provisions of Section 37 and the allied provisions of the NDPS Act are required to be construed strictly, since those operate as fetters against the fundamental right conferred on a citizen under Article 21 of the Constitution of India.

10. In the present case, we find that there is palpable discrepancy between the colours of the allegedly seized articles as mentioned in the certified samples and those which went for chemical examination, as is evident from the CFSL report.

11. Although learned counsel for the State has argued that there may be certain change of colour in the samples due to exposure to air, the same is a subject matter for trial.

12. As of today there is nothing on record to justify the samples changing colour, either from the certification of the Magistrate or from the CFSL report, the latter having been conducted by experts in the field.

13. More importantly, we find from the Notification dated November 16, 2018 that the same, as rightly argued by the petitioner, merely empowers the “willing sergeants” of the Kolkata Police to investigate cases under the Criminal Procedure Code, which is a general empowerment under the Criminal Procedure Code.

14. However, what is required in the search and seizure process under the special statute, that is, the NDPS Act, is a specific empowerment under Section 42 of the said Act, which is not found from the Notification dated November 16, 2018.

15. Hence, a strong *prima facie* case has been made out that the sergeants who conducted the process of search and seizure were not empowered to do so.

16. In terms of the judgment of the Supreme Court reported at (2000) 8 SCC 590 (*Roy V.D. vs. State of Kerala*), in such a situation, even the proceeding itself may be quashed.

17. We are not required to go to such an extent but in the light of the above developments, we are of the opinion that sufficient case has been made out to rebut the presumption under Section 37 of the NDPS Act.

18. It must be added here that the petitioner is about twenty years old and has his entire life before him. Hence, there is no further need to incarcerate the petitioner, more so in view of the fact that charge sheet has already been filed and charges have already been framed.

19. Accordingly, CRM (NDPS) 1777 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Chief Metropolitan Magistrate, Kolkata.

20. The petitioner shall not leave the territorial jurisdiction of the city of Kolkata without leave of the jurisdictional court and shall attend the trial on each and every date.

21. The petitioner shall not 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.)**

**(PARTHA SARATHI CHATTERJEE, J.)**