

01.03.2023.
17/tkm

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Bhaktinagar P.S case no.1590 of 2021 dated 18.12.2021 under sections 21(c)/ 22(c) /23(c) of the NDPS Act.

...for the Petitioner

...for the State.

Learned lawyer for the State opposes the bail prayer. He submits that the samples were drawn in accordance with law. He assures this court that chemical examiner's report shall be filed within four weeks.

¹ (2016) 3 SCC 379

Court *inter alia* held that drawal of samples at the spot in terms of Standing Instruction of 1 of 1988 is not permissible. Whether the manner of drawal of samples has prejudiced the petitioner requires to be assessed in the light of the evidence adduced during trial. Hence, no case to grant bail on merits in the light of restrictions under section 37 of the NDPS Act is made out. Police report had also been filed within the stipulated time. Non-accompaniment of documents e.g. chemical report with the charge sheet does not change the character of the police report under section 173(2) of the Code of Criminal Procedure. Reference may be made to *Suresh Kumar Bhikamchand Jain vs. State of Maharashtra & Anr.*² And *Serious Fraud Investigation Office vs. Rahul Modi & Ors.*³ That apart, it is assured that chemical examiner's report shall be filed shortly.

Under such circumstances, we are also not inclined to grant bail to the petitioner on the ground of non-submission of police report within stipulated period.

Accordingly, prayer for bail is rejected.

(Subhendu Samanta,J.)

(Joymalya Bagchi, J.)

² (2013) 3 SCC 77

³ 2022 SCC OnLine SC 153