

**In the High Court at Calcutta
Circuit Bench At Jalpaiguri
Appellate Side**

28.02.2023
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allowed

CRM (NDPS) No. 171 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Jalpaiguri Police Station Case No. 337 of 2022 dated 09.04.2022 under Sections 20(b)(ii)(c) of the NDPS Act.

And

In Re : Sri Dinesh Sahani petitioner

Mr. Subham Sarkar

.....for the petitioner

Mr. Nilay Chakraborty

Mr. Saikat Chatterjee

..... for the State

Learned Counsel for the petitioner submits that he is in custody for 311 days. It is also submitted prayer for extension of the period of detention under the proviso to Section 36A(4) of the NDPS Act was made on the ground of non-submission of chemical examiner's report. He relies on the ratio of this Court in *Subhas Yadav vs. The State of West Bengal*¹. He submits the ground of extension is not sufficient. He prays for bail.

Learned Counsel for the State opposes the prayer for bail.

We have considered the materials on record. We have also perused the applications of the learned Public Prosecutor seeking extension of the detention under the proviso to Section 36A(4) of the NDPS Act.

In *Subhas Yadav vs. The State of West Bengal* (supra) Special Bench of this Court, inter alia, held in cases of possession simpliciter, period of detention may not be extended on the sole ground of non-availability of chemical examiner's report. Needless to mention further detention of the petitioner in such case would

¹ 2023 SCC OnLine Cal 313

not facilitate the process of obtaining the chemical examiner's report. No aggravating circumstance to justify further detention of the petitioner for progress of investigation is either pleaded in the application or reflected in the orders extending the period of detention. Hence, we are of the opinion extension of the period of detention of the petitioner is unjustified and the petitioner is entitled to bail. Accordingly, we are inclined to grant bail to the petitioner.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional District & Sessions Judge, 1st Court (under NDPS Act) at Jalpaiguri, subject to the condition that the petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without further reference to this Court.

The application for bail is, accordingly, allowed.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)