

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

28.02.2023
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sdas
allowed

CRM (NDPS) No. 230 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with New Jalpaiguri Police Station Case No. 741 of 2022 dated 09.07.2022 under Sections 21(c)/22(c)/29 of the NDPS Act.

And

In Re : Md. Jinnatullah Firdous petitioner

Mr. Biswarup Roy
.....for the petitioner

Mr. Nilay Chakraborty
Mr. Tapan Bhattacharjee
..... for the State

Learned Counsel for the petitioner submits that he is in custody from 9th July, 2022. He had applied for statutory bail. On the other hand, prosecution applied for extension of period of detention under the proviso to Section 36A(4) of the NDPS Act. Extension was granted on the sole ground of non-availability of chemical examiner's report. This is contrary to the directions of this Court in *Subhas Yadav vs. The State of West Bengal*¹. Hence, he prays for bail.

Learned Counsel for the State opposes the bail prayer.

¹ 2023 SCC OnLine Cal 313

We have considered the materials on record. Petitioner is in custody for more than 180 days. Prayer for extension of his detention under the proviso to Section 36A(4) of the NDPS Act was made by the Public Prosecutor. We have perused the application. Sole ground of such extension is non-availability of chemical examiner's report. In *Subhas Yadav vs. The State of West Bengal* (supra) a Special Bench of this Court, inter alia, held that extension of period of detention under the proviso to Section 36A(4) of the NDPS Act on the sole ground that the chemical examiner's report is not available is unjustified.

Facts of the present case show apart from the non-availability of chemical examiner's report no other ground justifying further detention is either pleaded in the application or reflected in the order passed by the Special Court. Under such circumstances, we are of the opinion that extension of period of detention of the petitioner under the proviso of Section 36A(4) of the NDPS Act is unjustified and he is entitled to statutory 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 Sessions and Special 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.)