

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

03.03.2023
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allowed

CRM (NDPS) No. 240 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. 440 of 2020 dated 06.05.2022 under Sections 21(b)(ii)(c) of the NDPS Act.

And
In Re : Asem Sk. & Anr. petitioners

Mr. Sourav Ganguly
Ms. Supriya Debnath
.....for the petitioners

Mr. Kallol Acharjee
Mr. Tapan Bhattacharjee
..... for the State

Learned Counsel for the petitioners submits they are in custody since 06.05.2022. It is also submitted extension of period of detention under proviso to Section 36A(4) of the NDPS Act was sought for on the sole ground of non-availability of the chemical examiner's report and their prayer for statutory bail was illegally turned down. Hence, they pray for bail.

Learned Counsel for the State opposes the prayer for bail.

We have considered the materials on record. Petitioners were arrested on 06.05.2022. On 26.09.2022 report of the Public Prosecutor was submitted praying for extension of detention, inter

alia, on the ground that chemical examiner's report is not available. Statuary bail prayer of the petitioner was turned down and the extension was granted for sixty days. Subsequently, another report was filed on 19.12.2022 seeking extension of detention on similar grounds.

From the materials on record, extension of detention in the present case had been granted primarily on the ground of non-availability of the chemical examiner's report. Though there are vague averments that the petitioners are residents of a different district i.e. Murshidabad and involved in supplying contraband articles, no factual foundation in the form of criminal antecedents is either pleaded in the extension petition or placed before us. Accordingly, we are of the opinion that extension of detention granted by the Special Court solely on the ground of non-availability of chemical examiner's report. This runs contrary to the law declared in *Subhas Yadav vs. The State of West Bengal*¹. Hence, we are inclined to enlarge the petitioners on bail.

Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act, Jalpaiguri, subject to the condition that the petitioners shall

¹ 2023 SCC OnLine Cal 313

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 petitioners fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail automatically without further reference to this Court.

The application for bail is, accordingly, allowed.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)