

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

03.03.2023
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sdas
allowed

CRM No. 478 of 2021
with
CRAN 1 of 2021

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Kotwali Police Station Case No. 613 of 2019 dated 22.09.2019 under Sections 22(c)/25/29 of the NDPS Act.

And
In Re : Rakesh Shaw petitioner

Ms. Ashima Mandla
Mr. M. Singh
Mr. Deborshi Dhar
Mr. Surya Pratap Singh
.....for the petitioner

Mr. Aditi Shankar Chakraborty, learned APP
Mr. Nilay Chakraborty
Mr. Saikat Chatterjee
..... for the State

Learned Counsel for the petitioner submits he is in custody for three and half years. It is also submitted extension of period of detention was made solely on the ground of non-availability of chemical examiner's report. Such extension was unjustified in view of the law declared in *Subhas Yadav vs. The State of West Bengal*¹. Hence, he prays for bail.

¹ 2023 SCC OnLine Cal 313

Learned Counsel for the State opposes the bail prayer and submits charge-sheet has been filed and CFSL report is on record. Date has been fixed for recording evidence.

We have considered the materials on record. Petitioner was arrested on 23rd September, 2019. No narcotics was recovered from his possession. Before expiry of 180 days report of the learned Additional Public Prosecutor was filed seeking extension of period of detention on the ground of non-availability of chemical examiner's report. It was also pleaded that the petitioner is a member of a drug racket. In this backdrop we called upon the State to substantiate the allegation of involvement of the petitioner in an organized drug racket. No material showing criminal antecedents of petitioner is placed on record. Hence, we are of the view the extension was granted on the ground of non-submission of CFSL report only. 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 on the sole ground of non-availability of chemical examiner's report is unjustified unless other aggravating circumstances are demonstrated. As noted earlier petitioner has no criminal antecedents and no factual foundation with regard to his involvement in a drug racket has not been placed on record. Hence, we are of the opinion extension of detention of the petitioner under the proviso to Section 36A(4) of

the NDPS Act was not in accordance with law. That apart, petitioner is in custody for more than three years and witness action has not commenced. There is little possibility of trial concluding in the near future. Under such circumstances, we are of the opinion 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 Judge, Special Court under NDPS Act, 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.

Connected application, if any, is also disposed of.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)

