

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

17.08.2023
Court No.1
Item. 10
(Suvendu)

CRM(NDPS) 557 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Bagdogra Police Station Case No. 556 of 2022 dated 20.11.2022 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of: Md. Aslam

.Petitioner.

Ms. Rima Sarkar
Ms. Sidhi Sethia

For the Petitioner.

Mr. Nilay Chakraborty
Mr. Kallol Nag

For the State.

1. The I.O. was requested to be present in Court today to explain the clear discrepancy of dates disclosed in the material before us.
2. The relevant documents show that the seized narcotic article was sent by the I.O. to the CFSL and was received by the latter on 25th November, 2022. The certification of correctness of the inventory was however done by the Judicial Magistrate, Siliguri, 3 days after on 28th November, 2022. This would appear from the charge-sheet filed by the Bagdogra Police Station on 18th May, 2023. The inventory made by the Judicial Magistrate also records a date of 28th November, 2022. The I.O. certifies that the sample was directly sent to the CFSL, Kolkata without being certified by the Magistrate.

3. The above fact is in clear violation of Section 52A of the NDPS Act, 1985. Sub-section (2) requires certification of correctness of the inventory prepared to be done in the presence of the Magistrate.

4. The Supreme Court decision in *Union of India Vs. Mohanlal*, (2016) 3 SCC 375, also held drawing of samples in presence of a Magistrate to be a mandatory requirement. We are shown a coordinate Bench judgment of 1st December, 2020 in CRM 8037 of 2020 (In the matter of: Md Jalil @ Jang) in this context.

5. We are accordingly of the view that the clear discrepancy and the admitted infraction of Section 52A of the NDPS Act along with the settled law on the subject is enough to rebut the statutory restriction under Section 37 of the NDPS Act. The prayer for bail is hence allowed.

6. We accordingly direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand only) with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Additional Sessions Judge, Special Court (Under NDPS Act), 2nd Court, Siliguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall also make himself available for the trial as and when the petitioner is required and shall also not leave the jurisdiction of the concerned police station without leave of the concerned authorities.

7. CRM(NDPS) 557 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)