

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

**25.08.2023**  
Court No.1  
Item. 13  
(Suvendu)

**CRM(NDPS) 593 OF 2023**

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Siliguri Police Station Case No. 1094 of 2021 dated 05.09.2021 under Sections 21(c)/ 22(c) of the NDPS Act, 1985.

And

In the matter of: Kawar Gowala

. . . . .Petitioner.

Mrs. Kakali Bose  
Mr. Akhil Biswas  
Mr. Rahul Yongon  
Mr. Sudip Banerjee

For the Petitioner.

Mr. Aditi Shankar Chakraborty  
Mr. Tapan Bhattacharjee

For the State.

1. The admitted case presented to the Court as also corroborated by the I.O. is that the seized substances were received by the State Drugs Control and Research Laboratory on 10<sup>th</sup> September, 2021 whereas the certification of the Magistrate of the substances was done subsequently on 24<sup>th</sup> September, 2021.
2. It is also the case of the prosecution that the substances which were subsequently certified in presence of the Magistrate have been kept in the place where such materials are usually kept.
3. We find that this was done contrary to the direction passed by the learned Judicial Magistrate, 1<sup>st</sup> Court, Siliguri.

4. We are of the view that the above facts are in clear contravention of the mandate of section 52A of the NDPS Act including Sub-section (2) thereof which casts an obligation on the authorities to certify the correctness of the inventory prepared take photographs and draw representative samples of the substances in presence of the Magistrate.

5. Sending the seized substances directly for chemical examination before the certification is done in accordance with Section 52A (2) of the Act is, in our view, is sufficient to rebut the statutory restriction under Section 37 of the NDPS Act.

6. The prayer for bail is accordingly allowed.

7. 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), 2<sup>nd</sup> Court, Siliiguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall report to the I.O. of the concerned Police Station once every fortnight and shall not leave the local limits of the local police station without leave of the learned Special Court (Under NDPS Act), 2<sup>nd</sup> Court, Siliguri. The petitioner shall also make himself available for the trial as and when the petitioner is required.

8. CRM(NDPS) 593 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

