

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

24.08.2023
Court No.1
Item. 06
(Suvendu)

CRM(NDPS) 602 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Kotwali Police Station Case No. 112 of 2023 dated 01.02.2023 under Sections 20(C)/ 25/ 27A/ 28/ 29 of the NDPS Act, 1985.

And

In the matter of: Munu Lama @ Munu Lama Dey
.....Petitioner.

Mr. Arjun Chowdhury
Ms. Pratusha Dutta Chowdhury
Ms. Riya Agarwal

For the Petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Kallol Nag

For the State.

1. From the submissions made on behalf of the parties and the I.O. who corroborates the facts, it appears to be undisputed that the samples were seized on 1st February, 2023 and the seized substances were sampled in presence of the Magistrate on 23rd March, 2023 after a delay of 49 days. Even more curious fact is that after the sampling of the seized substances, 90 days thereafter the substances were sent to CFSL, Guwahati on 23rd June, 2023.

2. Although learned counsel appearing for the prosecution opposes the prayer for bail, the prosecution does not have any answer for the intervening delay either in the sampling of the

substances or sending the samples thereafter for chemical examinations. The prosecution, in fact, still does not have a Report of the Chemical examination of the seized substances.

3. The Supreme Court in *Union of India Vs. Mohanlal & Another*, (2016) 3 SCC 379 held, inter alia, that the seizure of the contraband substances must be followed by an application for drawing up of the samples certification as contemplated under the NDPS Act without any unnecessary delay. The direction given by the Supreme Court also places emphasis on the seizure and sampling of the contraband substances under Section 52A of the Act as expeditiously as possible.

4. Section 52A of the NDPS Act deals with disposal of seized Narcotic Drugs and Psychotropic Substances. Sub-section 2 contains a mandate on the certification, photographing and drawing of samples to be done in presence of a Magistrate. Section 52-A (1) as well as (3) contain the words “as soon as may be after the seizure and as soon as may be allow the application”.

5. Hence, the NDPS Act also recognizes and requires that there should not be any delay after seizure of the contraband items..

6. The present case runs contrary to the mandate of Section 52A of the NDPS Act without any satisfactory explanation.

7. We are accordingly of the view that the facts are sufficient to rebut the statutory restrictions under Section 37 of the Act.

8. The prayer for bail is hence allowed.

9. 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, 1st

Court, Cooch Behar (NDPS). 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) at Cooch Behar. The petitioner shall also make himself available for the each date of the trial and also as and when the petitioner is required.

10. CRM(NDPS) 602 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)