

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

23.08.2023
Court No.1
(D/L 15)
(AK)

CRM (NDPS) 603 OF 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 14.08.2023 in connection with Matigara Police Station Case No.80 of 2023 dated 02.02.2023 under Section 21(c) of N.D.P.S. Act, 1985.

And

In the matter of: **Niraj Thapa and another**

... Petitioners.

Ms. Rima Sarkar
Ms. Sidhi Sethia

...for the petitioner.

Mr. Nilay Chakraborty
Mr. Dhiman Sil

... for the State.

Both parties are present.

It is submitted on behalf of the accused petitioners that they are in custody since for a considerable period of time. It is further submitted that an extension application for submitting charge sheet was filed on behalf of the prosecution as the clinical examination report of contraband articles was not received and the said application was extended by passing an order dated 03/08/2023 by the Ld. Trial Court. It is stated that the petitioners thereafter on 181 days filed an application of getting statutory bail as the said extension allowed by the Ld. Trial Court was not tenable under the provision of law . However the said application was rejected by the court.

Our attention is drawn about the decision rendered by a Larger Bench of our High Court in case of Subhas Yadav vs. The State of West Bengal (CRM 146 of 2021 with CRAN 1 of 2021) and also a decision passed by the coordinate bench in connection with CRM (NDPS) No. 232 of 2023.

Ld. Counsel for the state opposes the bail prayer.

We have considered the material on record and it appears that application praying for extension of time for submission of charge sheet was made by the prosecution on the ground of non-availability of chemical examiner's report. In Subhas Yadav (Supra) a Special Bench of this Court held that extension of period of detention under the proviso to section 36 A (4) of the NDPS Act on the sole ground of non-availability chemical examiner's report is unjustified.

Under such circumstances we are of the opinion that extension of period of detention of the petitioners is unjustified. Accordingly we are inclined to grant the prayer for bail to the petitioners.

We accordingly, direct that the petitioners shall be released on bail upon furnishing bonds of Rs. 10,000/- (Rupees Ten Thousand Only) each with two sureties each of like amount, one of who must be local and to the satisfaction of the learned Additional District and Session Judge, 2nd Court (Special Court), Siliguri. The petitioners shall not induce witnesses or influence them or tamper with the evidence. The petitioners shall also make themselves available for the trial as and when the petitioners is required and shall also not leave the jurisdiction of the concerned police station without leave of the concerned authorities.

C.R.M. (NDPS) 603 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)