

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

25.08.2023
Court No.1
(D/L 12)
(AK)

CRM (NDPS) 612 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.1418 of 2021 dated 18.12.2021 under Section 21(c) of the N.D.P.S. Act, 1985.

And

In the matter of: **Ajay Sha**

... Petitioner.

Ms. Rima Sarkar
Ms. Sidhi Sethia

... for the petitioner.

Mr. Nilay Chakraborty
Ms. Sukanya Adhikary

... for the State.

The admitted case presented to the court as also corroborated by the IO is that the seized substances were received by the State Drugs Control and Research Laboratory on 24.12.2021 whereas the certification of the Magistrate of the substances was done subsequently, that is, on 7.1.2022.

It is also the case of the prosecution that the substances which were subsequently certified in the presence of the Magistrate have been kept in the place where such materials are usually kept.

We also find that this was done contrary to the direction passed by the learned Judicial Magistrate, First Court, Siliguri.

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 the presence of the Magistrate. Sending the seized substance 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.

We are hence inclined to grant the prayer for bail.

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 each of like amount, one of who must be local and to the satisfaction of the learned Special Judge, Special Court (NDPS Act, 1985), Jalpaiguri. 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.

C.R.M.(NDPS) 612 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)