

06.09.2023

Court No.01
P.P./S.D./41

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

CRM (NDPS) 677 of 2023

In Re : **Bishal Mandal**

- Petitioner

Mr. Abhishek Sarkar
Mr. Kumar Shantanu
... for the Petitioner.
Mr. Kallol Acharjee
Mr. Tapan Bhattacharjee
Mr. Dhiman Sil
... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Matigara Police Station Case No. 973 of 2022 dated 15.09.2022 under Sections 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

Mr. Sarkar, learned counsel appears on behalf of the petitioner and submits that there has been an undue delay in seizing of the contraband substance and sending the same for sampling and certification by the learned Judicial Magistrate. Furthermore, he submits that such delay has not been explained by the State authorities. He also relies on an order dated August 24, 2023 passed by a co-ordinate Bench in CRM (NDPS) 602 of 2023 in support of his contention that due to undue delay bail may be granted in favour of the petitioner. The mandatory provisions of 52A have been clearly violated.

Mr. Acharjee, learned counsel appearing on behalf of the State submits that the offence committed by the petitioner is grave in nature and as such, rigours of Section 37 of the NDPS Act,

1985 are clearly attracted. Therefore, the prayer for bail should be rejected.

Considering the rival submissions of the parties and materials placed on record, this Court is of the view that the contraband substance above commercial quantity was seized on September 15, 2022. The same was sent to FSL for examination on September 26, 2022 and an application was made before the learned Magistrate for certification on September 26, 2022. Therefore, the mandatory provisions of Section 52 A of the NDPS Act have been violated. Furthermore, there is no explanation as to why there was such inordinate delay in making an application for such certification by the Officer-in-charge, Matigara Police Station.

The learned Judicial Magistrate passed an order of certification on September 27, 2022. This Court is of the view that the observations made in the judgment of the Apex Court in ***Union of India Vs. Mohanlal & Another***, reported in (2016) 3 SCC 379 regarding the seizure and certification of the contraband substance to be made without undue delay have not been followed.

Therefore, it directs the petitioner, namely, **Bishal Mandal** to be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court (NDPS Act), 2nd Court, Siliguri with further condition that he shall meet with the Officer-in-Charge, Matigara Police Station once a week until further orders. He shall not leave the jurisdiction of Matigara

Police Station, save and except, for attending the learned Court below on all the dates fixed for hearing.

The petitioner shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

It is made clear that in the event the conditions as stated above are not complied, without justifiable cause, the learned Court below would be at liberty to cancel the petitioner's bail without any further reference to this Court.

Accordingly, **CRM (NDPS) 677 of 2023** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Lapita Banerji, J.)

(Tapabrata Chakraborty, J.)