

D/L. 54.
September 13, 2023.
MNS

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 710 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 8.09.2023 in connection with Siliguri Police Station Case No. 747 of 2022 dated 06.08.2022 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Rashidul Hussain @ Hossain

.... Petitioner

Ms. Suman Sehanabish (Mondal),
Mr. Salok Sah

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Subhasish Misra

... for the State.

1. Learned counsel for the petitioner submits that the petitioner is already in custody for 403 days.
2. That apart, it is argued that the provision of Section 50 of the NDPS Act was violated in the present case, as a member of the raiding party acted as a Gazetted Officer at the time of search.
3. Moreover, it is argued that, as it transpires from the charge-sheet, it is not clear whether the inventorization was done prior to the samples being sent for FSL report as well as whether the samples sent for the purpose of the report were identical with the ones seized.
4. Learned counsel for the petitioner places reliance on the judgement of the Supreme Court in *State of Rajasthan Vs. Parmanand* as well

as on *Union of India Vs. Mohanlal*, also of the Supreme Court, in support of her contentions.

5. Learned counsel appearing for the State opposes the prayer for bail and submits that the juristic position is somewhat fluid and has changed since *Mohanlal (supra)* and the allegations made by the petitioner are somewhat of a technical nature; hence, those do not vitiate the trial.
6. It is further argued that the samples were seized from a bag and, as such, the argument regarding Section 50 contravention does not hold good.
7. Be that as it may, the petitioner is already in custody for more than 400 days and the trial is yet to be concluded.
8. That apart, the petitioner is justified in at least throwing a semblance of doubt with regard to whether the samples sent for examination were identical with that which were seized and inasmuch as whether the inventory was done prior to the samples being sent for examination.
9. At this stage, we are not inclined to go into the merits of the case, which will be kept open for trial.
10. However, sufficient justification is found for releasing the petitioner on bail on the above considerations.
11. Accordingly, CRM (NDPS) 710 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act, Siliguri.

12. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date.

13. The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)