

D/L. 20.
September 18, 2023.
MNS

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 714 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 08.09.2023 in connection with Matigara Police Station Case No. 557 of 2022 dated 13.05.2022 under Sections 20(b)(ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Md. Bablu @ Bablu Md.

.... Petitioner

Mr. Hillol Saha Podder

... for the petitioner

Mr. Abhijit Sarkar,
Mr. Tapan Bhattachrjee

... for the State.

1. Learned counsel for the petitioner fairly submits that bail was refused to the petitioner previously on February 10, 2023.
2. It is, however, contended that there is gross discrepancy between the sample exhibit which was seized and that which was sent for examination, which vitiates the seizure.
3. It is further argued that the sample was sent for chemical examination on May 16, 2022 and the Investigating Authority prepared the inventory on July 19, 2022, that is, two months thereafter.
4. These points were not urged on the last occasion, when bail was rejected, it is contended.

5. Learned counsel places reliance on a co-ordinate Bench judgment in CRM(NDPS) 559 of 2023 on the issue of discrepancy between samples.
6. Learned counsel appearing for the State opposes the prayer for bail.
7. It is argued by the State that the trial is at an advanced stage and, as such, bail ought not to be granted to the petitioner.
8. After the previous rejection of the bail to the petitioner on February 10, 2023, we find that some more time has elapsed without the trial being concluded as yet. More importantly, since there is no concept of constructive *res judicata* in a criminal proceeding, we are inclined to take into consideration the two additional points now urged by the petitioner.
9. Learned counsel for the petitioner has justification in arguing that in view of the gross discrepancy between the sample which was recovered and that which was sent for examination, as well as the fact that the inventory was prepared two months after the sample was sent for chemical examination, which were not taken into consideration in the earlier order of rejection, we are inclined to grant bail to the petitioner.
10. Accordingly, CRM (NDPS) 714 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.

11. 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.
12. 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.)