

AD-21
Ct No.01
Jalpaiguri
21.09.2023
B.Pal

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

CRM (NDPS) 739 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 11.09.2023 in connection with Bagdogra Police Station Case No. 189 of 2023 dated 04.05.2023 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of: UTTARA BISWAS

...Petitioner

Mr. Dhiraj Lakhotia,
Ms. Radhika Agarwal,
Ms. M. Joshi

... for the petitioner

Mr. Sourav Ganguly,
Mr. Dhiman Sil

... for the State

1. Learned counsel for the petitioner argues that the procedure of seizure itself is vitiated, since sampling was done at the spot even as per the complaint and FIR.
2. Learned counsel places reliance on *Union of India vs. Mohanlal and Another* reported at (2016) 3 SCC 379 in support of his contention.

3. It is further argued that the ratio laid down in *Mohanlal (supra)* has been followed subsequently in several cases. It is further argued that the petitioner is a lady and has two children who are approximately aged 7 and 9 years respectively.
4. Learned counsel for the State opposes the prayer and submits that charge-sheet has not yet been filed and it would not be appropriate to release the petitioner on bail in view of the restriction under Section 37 of the NDPS Act.
5. That apart, learned counsel places reliance on the case diary to show that the sampling was also carried out before a Magistrate and proper inventorization done. The superfluous sampling at the spot, it is argued, does not weigh in the circumstances of the case.
6. We find from the records that the State is justified in arguing that proper sampling was done before the Magistrate and a certificate of inventory was made. The State is justified in arguing that superfluous sampling at the spot *ipso facto* does not vitiate the process of trial.
7. The proposition laid down in *Mohanlal's case* and other judgments relying on the same is that sampling done at the spot, in the absence of a Magistrate, is vitiated and cannot *per se* be used to incriminate a person. However, even leaving aside the samples which was taken at the spot, there is sufficient compliance of the law and rules in as much as subsequently sample was done in presence of the Magistrate and the inventorization was duly certified.

8. Hence, on such ground, we are not inclined to accept the prayer of the petitioner. Insofar as the petitioner being the mother of two children is concerned, we do not find that the children of the petitioner, even as per the prayer of the petitioner, are suckling babies and as such and/or there are no other family members or close relatives or friends who could look after them in the meantime. Thus, keeping in view the presumption under Section 37 of the NDPS Act, we are not inclined to grant bail at this stage.
9. Accordingly CRM (NDPS) 739 of 2023 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)