

D/L. 25.
September 21, 2023.
MNS

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 749 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 12.09.2023 in connection with NJP Police Station Case No. 169 of 2023 dated 27.02.2023 under Sections 20(b)(ii)(C) /23(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Ranjit Kumar Ray @ Ranjit Kumr @ Ray

.... Petitioner

Mr. Jaydeep Kanta Bhowmik,
Mr. Sayantan Bhowmik,
Ms. Rikta Sarkar

... for the petitioner

Mr. Nilay Chakraborty

... for the State.

1. Learned counsel for the petitioner places reliance primarily on two factors to argue that the presumption under Section 37 of the NDPS Act is not applicable.
2. First, it is pointed out that in the charge sheet as well as the seizure list, the vehicle from which the contraband article was allegedly seized has been mentioned to have registration No. NL 01 G/8536. However, in the complaint it was mentioned that the complainants, due to "pen mistake", had mentioned the registration number of the vehicle as NL 01G/8536 "in lieu of" NL 01G/8534.
3. It is argued that hence there is ample doubt as to the identity of the vehicle which was actually found to be carrying contraband articles.
4. That apart, learned counsel argues that the samples were allegedly seized on February 27, 2023, but were sent for inventory on March 13,

2023 and was thereafter sent for chemical examination after three days. The huge gap in the interregnum, it is argued, tantamounts to violation of Section 52A of the NDPS Act.

5. Learned counsel places reliance on a co-ordinate Bench judgment dated September 6, 2023 in CRM(NDPS) 679 of 2023, where the Division Bench had observed, by relying on *Union of India Vs. Mohanlal* and another reported at (2016) 3 SCC 379 that in similar circumstances, *prima facie*, the provisions of Section 52A of the NDPS Act have been violated.
6. Learned counsel appearing for the State opposes the prayer for bail and contends that the alleged discrepancies are minor and technical.
7. It is further submitted that the rigours of Section 37 of the NDPS Act are attracted in the present case.
8. We find from the documents on record that in the charge-sheet it is clearly indicated that the contraband articles were recovered from a truck.
9. It is further mentioned that one pen drive, in which the entire search and seizure videography was recorded, was also a part of the charge sheet.
10. In such context, since the petitioner was the driver of the offending vehicle, we are of the opinion that the videography, in conjunction with the description of the articles and the truck are sufficient to *prima facie* indict the petitioner, irrespective of the minor technical flaw as pointed out in the complaint regarding the number of the vehicle. It cannot be gainsaid that the petitioner, along with the contraband, was *prima facie* apprehended in a truck, which has been described in the charge-sheet as well as the complaint, the seizure list also corroborates with the charge-sheet as well as the complaint.

11. Hence, we do not find any palpable violation of law in the process of seizure and arrest to mitigate the rigour of Section 37 of the NDPS Act.
12. Insofar as the judgment of the co-ordinate Bench judgment is concerned, we find that in the said case, the commercial quantity was seized on January 2, 2022 and sent to FSL for examination on January 25, 2022. In the said case, an application for certification was made on February 15, 2022, that is, after about 21 days from the sample being sent for examination.
13. However, in the present case, there is no such contravention of Section 52A insofar as the certification preceded the sample being sent for examination.
14. Accordingly, CRM (NDPS) 749 of 2023 is dismissed.
15. It is expected that the trial shall be concluded expeditiously.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)