

27.09.2023
Court No.1
SL No.18
pk/AP

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

CRM(NDPS) 780 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Matigara** P.S. Case No. **234 of 2023** dated **30.03.2023** under Sections **21(c)/29** of the NDPS Act.

And

In the matter of: **Md Sarfaraj Alam @ Md Sarfranj Alam**
.....Petitioner.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Meghana Joshi

...For the Petitioner.

Mr. T. Bhattacharya
Mr. Chattu Roy

...For the State.

1. The application for bail in respect of a proceeding under Sections 21(c)/29 of the NDPS Act is canvassed on two fold grounds. Firstly, the person who owned the purse from which contraband seized was a lady called Dipti Barman, who was granted bail on 6th September, 2023 in CRM (NDPS) 656 of 2023. The bail appears to have been allowed to her for two reasons that the seizure was effected on 29th march, 2023 and an application for certification under Section 52A Sub-Clause 2(c) was made before the Magistrate only 18th April, 2023.

2. The delay is about 21 days.

3. Reliance is placed by a Coordinate Bench on the decision of the Supreme Court in the case of **Union of India Vs. Mohanlal and Anr.** reported in **(2016) 3 SCC 379**. The

petitioner now is a co-accused, who seeks bail on the same ground.

4. This Court first notes that all the accused persons had confessed to possession of contraband of 301 gm of brown sugar (commercial quantity). The most common modus operandi of the smugglers of drugs of storing the contraband in a lady's purse, is done to avoid deduction. This defence of the petitioner cannot be a ground for bail. Specific reason on which bail was granted to Dipti Barman that she was a homemaker and was unlikely to flee from the jurisdiction of the Court.

5. This Court has, however, very carefully considered the interpretation and application of paragraph 19 of the decision of the Supreme Court in the case of **Mohanlal (supra)**. The section itself prescribes a reasonable time after seizure of the contraband within which the certification has to be obtained by production of sample before the Magistrate. Therefore, a delay in obtaining certification of the contraband cannot by itself vitiate the seizure or the proceedings. It has to be assessed in the facts and circumstances of each case.

6. Paragraph 19 of the **Mohanlal (supra)** decision in the opinion of this court does not prescribe that an accused would ipso facto, be entitled to bail and that the proceedings would be vitiated, if there is a delay in obtaining certification of the seized narcotics. In the instant case the accused have confessed to carrying commercial quantity of Brown Sugar.

7. While it is true that delay in obtaining certification must be avoided in all cases, some delay may occur due to unavoidable circumstances in certain cases. In the **Mohanlal**

(supra) decision the Hon'ble Supreme Court had expected the High Courts to ensure strict compliance of the expeditious application before the Magistrate for certification under section 52A sub-clause 2(2).

8. This Court, therefore, directs the Commissioner of Police, Siliguri Police Commissionerate to cause an enquiry into the delay by the investigating officer in producing samples of certification under section 52A in the instant case and submit an appropriate report before the Registry within a period of 15 days from date.

9. The Commissioner of Police, Siliguri Police Commissionerate shall be at liberty to take appropriate action against erring officials if any deliberate or willful and/or negligence is found on the part of the concerned officers.

10. In these circumstances, this Court is not inclined to grant bail to the petitioner.

11. Hence, the application for bail is hereby rejected.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)