

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

10.01.2023
Court No.1
Item. 11
(Suvendu)

CRM(NDPS) 429 OF 2022

An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Bhaktinagar Police Station Case No. 233/2022 dated 26.02.2022 under Section 21© /22© /29 of NDPS Act, 1985.

And

In the matter of: Ashim Akram & Ors.

.Petitioners.

Mr. Joydeep Kanta Bhowmik
Mr. Sayantan Bhowmik
Ms. Rikta Sarkar

For the Petitioners.

Mr. Nilay Chakraborty
Mr. Sourav Ganguly

For the State.

There was an admitted mistake on the part of the I.O. in calculating the quantity of narcotic substance seized from the petitioner. The charge-sheet mentions 0.593 grams which was sought to be supplemented by a second charge-sheet stating that 0.593 grams should actually mean 0.593 kilograms. The correction and the admitted error on the part of the I.O. would also appear from the order dated 15th March, 2022 of the learned Special Court, Jalpaiguri which mentions the inadvertent error. The facts also involve a delay of seven days when the recovered substance was in the custody of the I.O. and before the error was sought to be corrected. It is only after the correction that the substance seized became above commercial quantity under the NDPS Act, 1985.

We are of the view that the facts do not give us any certainty that a second error was out of the realm of possibility. Further, 0.593 grams becoming 0.593 kilograms is too mechanical and obvious. Whenever a statute contemplates serious consequences, there cannot be any margin of error on the part of the prosecution. Any error should be construed to the benefit of the accused. We also note that the petitioner has been in custody for 316 days.

The above factors persuade us to grant the prayer for bail.

We accordingly direct that the petitioners shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand only) each with two sureties each of like amount, one of who must be local, to the satisfaction of the learned Judge, Special Court (Under NDPS Act), Jalpaiguri. The petitioners shall not induce witnesses or influence them or tamper with evidence. The petitioners shall also make themselves available for the trial as and when the petitioners are required and shall also not leave the jurisdictional police station without leave of the concerned authorities.

We, however, make it clear that the issue of mistake in calculation of the quantity of narcotic substance shall be given due weightage at the time of trial.

CRM(NDPS) 429 of 2022 is accordingly allowed and disposed of in terms of the above.

(SIDDHARTHA ROY CHOWDHURY,J.) (MOUSHUMI BHATTACHARYA,J.)

