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***Calcutta High Court
In the Circuit Bench at Jalpaiguri***

CRM (NDPS) 436 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 16.12.2022 in connection with New Jalpaiguri Police Station Case No. 887 of 2021 dated 03.08.2021 under Sections 23(c) of the NDPS Act, 1985.

In the matter of : Arabinda Biswas @ Arobinda Biswas
... Petitioner

Mr. Sourav Ganguly,
Mr. Alok Sah

...for the petitioner

Mr. Abhijit Sarkar,
Mr. Saikat Chatterjee

.....for the State.

Learned counsel for the petitioner fairly submits that the previous prayer for bail of the petitioner was refused in the month of May, 2021 by a coordinate Bench of this court. However, by way of changed circumstance, learned counsel cites a Special Bench judgment of the principal Bench of this Court in the matter of *Subhas Yadav vs. The State of West Bengal* wherein it was held on reference *inter alia* that failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself

may not justify further detention pending completion of investigation.

In the present case as well, it is submitted that the extension application was made only two days before the expiry of mandatory period of 180 days. However, the sole ground for such extension was non filing of FSL report. We find from the observations in the Special Bench judgment, which is binding on this Bench, that such drawback is an institutional shortcoming. As such, in view of such changed circumstance, as indicated above, the petitioner is entitled to bail.

Learned counsel appearing for the State vehemently opposes the prayer for bail.

However, in view of the changed circumstances, as indicated above, CRM (NDPS) 436 of 2022 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bonds of Rs. 30,000/- (Rupees Thirty Thousand), 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), Jalpaiguri. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial except to attend court on the dates of trial. Moreover, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the court

or to any police officer or tamper with evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)