

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

11.01.2023
Court No.1
(D/L 16)
(SKB)

CRM (NDPS) 444 OF 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with N.D.P.S. Case No.16 of 2022 arising out of New Jalpaiguri P. S. Case No.140 of 2022 dated 03.02.2022 under Sections 20(b)(ii)(c) (with added Sections 25 and 29 after Charge Sheet) of the N.D.P.S. Act, 1985.

And

In the matter of: **Saidul Mia @ Saidul Maia**

... Petitioner.

Ms. Suman Sahanabish (Mondal),
Mr. Alok Sah,
Mr. Salok Sah

... for the petitioner.

Mr. Kallol Acharjee,
Mr. Saikat Chatterjee

... for the State.

Heard learned counsel for the petitioner. Drawing our attention to the seizure list which indicates that no sample was drawn by the police officer who seized the contraband articles allegedly from the custody of the petitioner.

According to learned counsel for the petitioner, this is an infraction of provision of 52(A) of the NDPS Act, raising serious doubt regarding recovery of alleged articles from the possession of the petitioner. Relying upon the judgment of the Apex Court passed in *Union of India Vs. Mohanlal* reported in AIROnline 2016 SC 606 : (2016)1 Mad LJ(Cri) 486, learned counsel for the petitioner submits that this lacunae is sufficient to rebut the statutory restriction laid

down under Section 37 of the NDPS Act. In *Mohanlal (supra)* Hon'ble Apex Court while discussing the provisions of Section 52(A) of the NDPS Act, observed that the lack of uniformity being followed by the central government agencies during seizure and drawing of sample, which led the Hon'ble Apex Court to pass certain directions in para 20 of the said judgment.

Learned counsel, Mr.Chatterjee, appearing for the State, however, opposes the prayer for bail.

Taking lumen from the decision of the Hon'ble Apex Court and considering the facts and circumstances of the case, we are of the view that this lacunae appearing in course of seizure should be considered as the sufficient to rebut the statutory restriction laid down under Section 37 of the NDPS Act.

Accordingly we are inclined to grant bail on condition that the petitioner will not make any attempt to interfere with the evidence and shall attend the learned trial court on every designated date and no attempt should be made on his part to cause delay in the proceedings of trial.

We accordingly, direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/-(rupees ten thousand only) with two sureties each of like amount, one of who must be local to the satisfaction of the learned Judge, Special Court (NDPS Act), Jalpaiguri.

C.R.M.(NDPS) 444 of 2022 is accordingly allowed and disposed of in terms of the above.

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