

04.09.2024
Item no. 11.
Court No.28.
AB
(Allowed)

CRM (NDPS) 1175 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure, 1973/Under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Jalangi Police Station Case No.13 of 2024 Dated 9.1.2024 under Section 21C/29 of the NDPS Act

And

In the matter of : Nagma Bibi @ Nagma Khatun Bibi @ Najma

.....Petitioner.

Mr. Moyukh Mukherjee,
Mr. Anisur Rahaman,
Ms. Triparna Royfor the Petitioner.

Ms. Faria Hossain
Ms. Sujata Dasfor the State.

Dictated by Arijit Banerjee, J.

1. The petitioner is in custody for over seven months. She says that the mandatory procedure under Section 52A of the NDPS Act has not been complied with by the Investigating Officer. There was no Gazetted Officer at the time of drawing of samples. Hence, the prosecution case is bound to fail. She prays for bail.
2. Opposing the prayer for bail, learned State Counsel says that the procedure under Section 52A of the NDPS Act was partly followed. However, she says that the date for certification has been fixed on 4.9.2024 i.e. today.
3. We fail to appreciate as to how after eight months of the alleged seizure of contraband items, date can be fixed for certification as contemplated under Section 52A of

the NDPS Act. We see that there was non-compliance with the provisions of that Section.

4. Hence, in view of the law laid down in the case of ***Union of India Vs Mohanlal & Anr.*** reported in ***(2016) 3 SCC 379***, we are inclined to allow the petitioner's prayer for bail.
5. Accordingly, we direct that the petitioner, namely **Nagma Bibi @ Nagma Khatun Bibi @ Najma** shall be released on bail upon furnishing a bond of Rs.25,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the NDPS Act at Berhampore, Murshidabad, and on further conditions that she shall not leave the jurisdiction of the concerned police station until further orders and shall cooperate with the investigation.
6. The petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever.
7. In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.
8. The application for bail is, accordingly, allowed.

9. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)