

04.09.2024
Item no. 13.
Court No.28.
AB
(Allowed)

CRM (NDPS) 1183 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.29 of 2024 Dated 23.01.2024 under Section 21C/29 of the NDPS Act

And

In the matter of : Md. Fakhuddin

.....Petitioner.

Mr. Arnab Chatterjee,
Ms. Dhanasree Biswas,
Ms. Poulami Bose

.....for the Petitioner.

Mr. Sujay Sarkar

.....for the State.

Dictated by Arijit Banerjee, J.

1. Let the chemical report filed in Court today, be kept with the records.
2. The seized articles have tested positive i.e. they are narcotics.
3. However, we see that the mandatory procedure prescribed by Section 52A of the NDPS Act has not been followed in this case. The samples were not drawn in the presence of a Magistrate. It appears that pursuant to the direction of the Coordinate Bench passed on July 31, 2024, the Investigating Authorities in a hurry sent samples to the Forensic Science Laboratory without ensuring that the samples are drawn in the presence of a Magistrate.
4. In view of the aforesaid and 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 **Md. Fakhuddin** 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 he shall not leave the jurisdiction of the concerned police station and shall report to the Officer-in-Charge of the concerned police station once in a fortnight until further orders.
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.)

