

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

12.03.2024
Court No.1
Item. 07
(Suvendu)

CRM(NDPS) 47 OF 2024

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Jalpaiguri Kotwali Police Station Case No. 209/2022 dated 08.04.2022 under Sections 22(c)/28/29 of the NDPS Act corresponding to NDPS Case No. 41 of 2022 before the learned Special Court (NDPS Act) 1st Court, Jalpaiguri.

And

In the matter of: Md Sultan Sk @ Sultan Sek

.Petitioner.

Mr. Biswarup Roy
Mr. Supriya Debnath

For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Kallol Nag

For the State.

1. The prosecution has not explained the delay of three months from the date of certification of the alleged contraband substance to the CFSL Report. The relevant dates are as follows.
2. The seizure was made on 8th April, 2022, the inventory was done on 19th April, 2022 but the CFSL, Kolkata received the samples on 13th May, 2022 and gave its Report on 15th July, 2022.
3. Apart from unexplained delay, what is even more shocking is the content of the explanation Report filed by the prosecution today. The Report states that the samples were first sent to the CFSL on 21st April, 2022 but was returned on the very next date, i.e. on 22nd April, 2022 on the ground that the seal of the learned Chief Judicial Magistrate, Jalpaiguri in the CFSL form was not properly visible. The samples thereafter were resent on 29th April, 2022 for examination but were returned since the CFSL, Kolkata was closed due to the day being the

- 4th Saturday of the month. The samples were finally sent again to CFSL, Kolkata on 9th May, 2022. The CFSL Report is of 15th July, 2022.
4. The sheer inaction, laxity and indifference of the system compounded by the inefficiency and total disregard of the procedure on the part of the CFSL, Kolkata and the prosecution amounts to a systematic failure.
 5. The Supreme Court has held in several decisions that systematic failures cannot be a reason for keeping an accused behind bars for an indefinite period of time.
 6. Apart from the inaction/ failure to comply with the established procedure by the CFSL, Kolkata, we also find a *prima facie* violation of Section 52A(2) of the NDPS Act, 1985.
 7. The above circumstances are sufficient to rebut the statutory restriction under Section 37 of the NDPS Act.
 8. The prayer for bail is hence allowed.
 9. 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 of like amount each, one of who must be local, to the satisfaction of the learned Special Court (NDPS Act) 1st Court, Jalpaiguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall also make himself available for the trial as and when the petitioner is required and shall also not leave the jurisdiction of the concerned police station without leave of the concerned authorities.
 10. CRM(NDPS) 47 of 2024 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

