

29.04.2024
SL No.8
Court No.1
(gc)
(rejected)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (NDPS) 191 of 2024

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Samuktala Police Station Case No.224 of 2023 dated 04.10.2023, under Section 20(b)(ii)(b) of the NDPS Act, 1985.

And

In the matter of : **Nitesh Sriwastav**

- Petitioner.

Mr. Kallol Mandal,
Mr. Anindya Ghosh,
Mr. Sudip Guha,
Mr. Sandip Guha Roy,
Mr. Ananda Paul

....For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP.,
Mr. Aniruddha Biswas

....For the State.

1. Learned Counsel for the petitioner submits that the petitioner is in custody for 205 days and narcotic substance above commercial quantity is alleged to have been recovered from the joint possession of three accused persons. However, two of the accused persons are on bail as they are juvenile.
2. Mr. Mandal has strenuously argued that due to violation of Section 52A of the NDPS Act, 1985 read with Rules 13 and 14 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, the petitioner is entitled to bail.

3. Mr. Mandal further submits that narcotic substance was alleged to have been seized on 4th October, 2023 and prayer for certification before the Magistrate was made on 11th October, 2023, that is, after 7 days and thereafter it was sent for clinical examination on 31st October, 2023, that is, almost 27 days after the seizure. Mr. Mandal has relied upon the decision of the Hon'ble Supreme Court in ***Mohammed Khalid & Anr. Vs. State of Telangana*** reported at **2024 SCC OnLine SC 213 Paragraph 22** to argue that in view of the fact that the Investigating Officer did not act in terms of the aforesaid provisions, the FSL report, if produced, during the trial would be considered to be a waste paper and cannot be read in evidence.
4. In opposing the prayer for bail, learned Counsel for the State has drawn our attention to Page 76 of the Case Diary to show the sequence of events regarding the seizure and it is clear from the Case Diary that the narcotic substance could not be sent to the Central Laboratory at Kolkata after 17th October, 2023 as the Central Laboratory was closed from 18th October, 2023 on account of Durga Puja.
5. Neither the Act nor the relevant Rules prescribe any time-frame within which all the aforesaid formalities are required to be completed. However it is needless to mention that it should be done expeditiously and unless there are reasons for the delay, the Court should

ordinarily grant bail to the petitioner for alleged violation of the aforesaid provisions.

6. In fact, a Coordinate Bench in **CRM(NDPS) 72 of 2024 (in the matter of Bubai Ghosh @ Choton decided on 14th March, 2024)** relied upon on behalf of the petitioner, granted bail as the prosecution had failed to offer any explanation for delay of 10 days in forwarding the sample for certification which is not the case here.
7. In the instant case, we are satisfied with the explanation offered by the prosecution for not being able to send the narcotic substance to the laboratory concerned for clinical examination. We find that there has been no intentional delay or culpable negligence on the part of the investigating agency in forwarding the contraband materials for chemical examination.
8. Accordingly, we are not inclined to grant bail to the petitioner in view of the fact that the narcotic substance over commercial quantity was recovered from the petitioner.
9. The prayer for bail is, accordingly, rejected.
10. All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Soumen Sen, J.)

(Partha Sarathi Sen, J.)