

AD-2
Ct No.01
Jalpaiguri
22.07.2024
SP

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 240 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **C.R. (N.D.P.S.) Case No. 54 of 2023** under Section **21(c) and 22(c)** of the N.D.P.S. Act, 1985 arising out of the **Kharibari P.S. Case No. 206 of 2023 dated 07/08/2023** under **Sections 21(c) and 22(c)** of the N.D.P.S. Act, 1985.

And

In the matter of: UTPAL DAS @ PUCHKI

Mr. Aniruddha Biswas, Adv.
Ms. Rima Sarkar, Adv.
Ms. Siddi Sethia, Adv.
Mr. A. Pada, Adv.
Mr. S. Pal, Adv.
Mr. Kanak Mishra, Adv.

... for the petitioner

Mr. Nilay Chakraborty, Ld. APP.,
Mr. Subhasish Misra, Adv.

... for the State

1. Learned counsel for the petitioner points out that the sample was seized on August 7, 2023 whereas it was sent for inventory as long thereafter as on September 18, 2023. The sample was sent for FSL report on September 22, 2023. It is submitted that in view of the gross delay of about one and a half months in sending the sample even for inventory, the principle laid down in *Union of India Versus Mohanlal and Anr.* reported at (2016) 3 SCC 379 has been violated.

2. That apart, it is argued that the petitioner runs a “Kabari” shop, dealing with junk and scrap material, and the possession was merely constructive and could not have been conscious.
3. Learned counsel also cites in support of his contention the judgment of *Simarnjit Singh Versus State of Punjab* where the Supreme Court reiterated *Mohanlal’s* ratio.
4. That apart, learned counsel also cites a judgment of a learned Single Judge of the Delhi High Court in the matter of *Kashif versus Narcotics Control Bureau*.
5. Learned counsel appearing for the respondent-State places reliance on the seizure list which indicates that recovery was made from the shop of the petitioner and the petitioner’s involvement cannot be ruled out.
6. Learned counsel also contends that the Supreme Court has issued directions in a separate case to ascertain whether follow-up action has been taken up by different States in compliance of the directions in *Mohanlal*.
7. The petitioner is in custody for 11 months. The investigation is now complete and charge-sheet has been filed.
8. We find from the circumstances of the case that the sample was sent even for inventory about one and half months from the date of seizure, which casts palpable doubt on the veracity of the samples, following the principle laid down in *Mohanlal’s case* and even otherwise by the Supreme Court and the Delhi High Court.

9. The judgment cited by the respondent merely reiterates the proposition of *Mohanlal* since the Supreme Court sought to ensure that the directives laid down in *Mohanlal and Another* has been complied with by the State.
10. Thus, we find sufficient prima facie lacunae in the case of the prosecution to grant the benefit of doubt within the provisions of Section 37(2) of the NDPS Act 1985 to the petitioner.
11. We cannot also lose sight of the fact that the petitioner runs a shop dealing with junk and scrap materials coming from different sources and as such it cannot be altogether ruled out that the petitioner might not have been in conscious possession of the contraband.
12. In such view of the matter, CRM (NDPS) 240 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Court (NDPS Act) at Siliguri.
13. Further, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

14. That apart, the petitioner shall not engage in any offence for which the petitioner has been accused in the present case and shall not leave the territorial jurisdiction of the trial court during the entire period of trial. The petitioner shall, during the entire period of trial, attend the hearing on each and every day.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)