

JPD-03
Ct No.01
25.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 250 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure 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.

And

In the matter of: **Nitesh Sriwastav @ Nitesh Srivastav**

.... petitioner

Mr. Arjun Chowdhury
Ms. Pratusha Dutta Chowdhury
Ms. Riya Agarwal

... for the petitioner

Mr. Ujjwal Luksom
Mr. Subhasish Misra

... for the State

1. The petitioner is in custody for 292 days.
2. Learned counsel for the petitioner argues that two other co-accused persons have been enlarged on bail.
3. However, it is fairly submitted that the other co-accused were granted bail primarily on the ground that they are juveniles.
4. It is further submitted that there was a delay in 27-28 days in sending the sample for chemical analysis. As such, there was a violation of Section 52A of the NDPS Act.
5. It is next contended by the petitioner that Section 42 of the Act has also not been complied with duly.
6. Learned counsel submits that although the charge sheet has been submitted some time back, till date no charges have been framed.

7. Learned counsel for the State opposes the prayer for bail and points out that vide order dated April 29, 2024 in CRM (NDPS) 191 of 2024, a prior similar prayer of the petitioner was rejected by a coordinate Bench.
8. The coordinate Bench, while coming to its conclusion, carefully considered the objection under Section 52A and observed that since the laboratory was closed during the Puja Vacation, the report could not be sent in due time.
9. We are, upon a consideration of the previous order, of the opinion that the objection as to violation of Section 52A of the NDPS Act cannot now be reopened, since it was conclusively dealt with by the coordinate Bench.
10. However, two factors play in our minds while considering the prayer for bail.
11. First, there is an alleged violation of Section 42 of the NDPS Act.
12. Although the same may very well be a subject-matter of the trial, nevertheless, the same also mitigates the rigours of Section 37 of the NDPS Act.
13. More importantly, we find from the records that the charge sheet was submitted long back on March 27, 2024 but till date, even charges have not been framed.
14. Since the petitioner is in custody for 292 days, we do not intend to keep him indefinitely behind the bars as an undertrial.

15. In view of the substantial period already spent behind the bars, we are inclined to grant bail to the petitioner, of course, subject to conditions as enumerated below.
16. Accordingly, CRM (NDPS) 250 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bonds of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of Learned Judge, Special Court (under NDPS Act, 1985) First Court at Jalpaiguri.
17. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
18. 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.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)