

AD-15
Ct No.01
Jalpaiguri
23.07.2024
SP

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

CRM (NDPS) 275 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Siliguri Police Station Case No. 943/2023 dated 17.11.2023 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of: **RAJJAK HUSSAIN**

. . . .for the petitioner

Mr. Hillol Saka Poddar, Adv.,
Ms. Mousumi Das, Adv.

... for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Kallol Acharjee, Adv.
Mr. Arjun Chowdhury, Adv.

... for the State

1. Learned counsel for the petitioner argues that in terms of the NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022, it is mandatory that in cases other than opium, ganja and charas (hashish), not less than five grams quantity is to be drawn from each sample and the same quantity is to be taken for the duplicate sample. In the present case, as evident from the chemical analysis report, the total weight of sample with plastic was four grams only.

2. It is further submitted that Rule 14 of the said Rules provides that the Chemical Laboratory shall submit its report to the Court of Magistrate with a copy to the Investigating Officer within fifteen days from the date of receipt of the sample. In the present case, the delay occasioned from receipt of the sample to giving the report was five months.
3. Learned counsel for the respondent opposes the prayer for bail and submits that it is well settled that if the FSL report is filed with the charge-sheet, no suspicion can be cast on the process of search and seizure. That apart, the Investigating Agency obtained a certificate of inventory on November 21, 2023, that is, soon after the seizure and sent the report for sampling on November 28, 2023; as such, there could not have been any delay on the part of the prosecution.
4. A careful scrutiny of Rule 11 of the 2022 Rules indicates that the quantity to be drawn from each of the samples has to be not less than five grams. In the present case, the weight of sample drawn, with the plastic packet containing it, was four grams.
5. However, we are of the opinion that such infraction of the Rule, if any, is by itself not sufficient to justify grant of bail.
6. The next component of challenge is that although Rule 14 mandates that the report is to be submitted within 15 days from receipt, in the present case, the delay was more than five months.

7. The proviso to Rule 14 also indicates that where quantitative analysis requires longer time than fifteen days, the results of the qualitative test shall be dispatched to the Court of Magistrate with a copy to the Investigating Officer within the said time limit on the original copy of the Test Memo and in the next fifteen days the result of quantitative test shall also be indicated on the duplicate Test Memo and sent to the Court of Magistrate with a copy to the Investigating Officer. Thus, the outer limit for indicating the quantitative test result is 30 days from the date from receipt of the sample, which has been grossly flouted in the present case. The laboratory which was entrusted with the job of chemical analysis took four months even beyond the outer limit for indicating the quantitative test report and there is nothing on record to show that the qualitative test result was intimated to the Magistrate within the time limit of fifteen days.
8. Although the Investigating Agency itself might not be responsible for the delay, even if the laboratory was responsible for the same, since the entire process was delayed by over four months, grossly contravening the provisions of the 2022 Rules, we are of the opinion that the presumption under Section 37 cannot be attached in the present case.
9. However, we are also of the further view that mere infraction of the Rules by a few days might not always be sufficient to

vitiate the entire process. In the peculiar circumstances of this particular case, however, since the delay was about five months, which is inordinate, we are inclined to extend the benefit of doubt to the petitioner.

10. Accordingly, CRM (NDPS) 275 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 Special Court under the NDPS Act at Siliguri.
11. 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.
12. 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 evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)