

JPD-08
Ct No.01
24.07.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 279 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Matigara** Police Station Case No. **66** of **2024** dated **30.01.2024** under Sections **21(c)** of the **NDPS Act, 1985**.

And

In the matter of: **Ratan Biswas**

.... petitioner

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... for the petitioner

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

... for the State

1. Learned counsel for the petitioner submits that there are certain extenuating circumstances for grant of bail as follows:

- (i) Rule 3 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (for short “the 2022 Rules”) was violated inasmuch as there was no separate weighing of the packages containing the offending substance and the substance itself;
- (ii) The provisions of Rule 14 of the 2022 Rules have not been complied with, since for over four months, the FSL report has not yet been filed;

- (iii) The provisions of the second proviso to Section 42(1), read with sub-section (2) of Section 42, of the NDPS Act have not been complied with.
2. Learned counsel for the State opposes the prayer for bail and submits that the technical objections taken by the petitioner can be thrashed out at trial and, as such, bail ought not to be granted so early in the day on such grounds.
 3. Insofar as the compliance of Section 42(1), second proviso and sub-section (2) of Section 42 is concerned, it is contended that the same has been complied with.
 4. Insofar as the third objection is concerned, we are of the opinion that the same can very well be taken as an objection in trial by the petitioner.
 5. Insofar as the first objection is concerned, we find that the commercial quantity designated for the narcotic substance concerned is 250 grams whereas recovery was to the extent of 256 grams. As per the FIR, the substance was found in a plastic zip pack. In our opinion, the difference between the commercial quantity and the weight of the substance actually recovered is not marginal. Even if the zip pack was weighed separately, its weight could not have been 6 gms. Thus, even excluding the roughly estimated weight of the zip pack, the contraband substance would exceed commercial quantity.

6. As such, the said ground cannot be a mitigating circumstance for the petitioner to overcome Section 37 of the NDPS Act.
7. Insofar as the second ground is concerned, we are also of the opinion that in view of constraints due to dearth of sufficient chemical laboratories designated for the purpose, there may be some reasonable delay on the part of the laboratories in issuance of reports, which *per se* cannot be an alleviating circumstance unless the delay is gross.
8. In such view of the matter, at this stage, we are not inclined to grant bail to the petitioner.
9. Accordingly, CRM (NDPS) 279 of 2024 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)