

JPD-4
Ct No.01
29.07.2024
S.Pal

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

CRM (NDPS) 297 of 2024

In Re: - An application for bail under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Kharibari Police Station Case No. 57/2024 dated 01.03.2024 under Sections 21(c)/22(c)/29 of the NDPS Act, 1985.

And

In the matter of: Kausari Begum @ Khousari Begum and Another

...Petitioners

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... for the petitioner

Mr. Kallol Acharjee,
Mr. Kallol Nag

... for the State

1. Both the petitioners are ladies.
2. Learned counsel for the petitioners points out to serious infraction of Section 52A of the NDPS Act.
3. It is shown to the Court from the certification of correctness that whereas the inventorisation might have been done, as per the same, on March, 12, 2024, the certificate, along with “newly sealed and labelled envelopes”, were handed over to the Investigating Officer only on March 27, 2024. On the

other hand, the laboratory report indicates that the sample was placed before the said laboratory on March 18, 2024.

4. Learned counsel for the State opposes the prayer for bail and contends that inventorisation had already been done when the sample was sent to the laboratory and as such there is no violation of Section 52A.
5. Learned counsel for the petitioner cites judgment of this Court indicating that the sample sent without the certification does not tantamount a valid sample, since there is doubt as to whether the sample sent was that which was actually certified or not.
6. In the present case, we find that it is clearly indicated in the certification that not only the certificate but the newly sealed and labelled envelopes containing the samples were handed over to the Investigating Officer only on March 27, 2024. As such, even if the inventorisation was actually done before the Magistrate prior to the said date on March 12, 2023, as on March 18, 2023, when the sample was sent to the laboratory, the same could not have been certified, since the sample so sent was not the newly sealed envelope carrying the sample which was handed over by the Magistrate subsequently to the I.O.

7. Thus, sufficient doubt is cast in the present case so as to give rise to a presumption that there was gross irregularity in the process of seizure and sending the samples of the contraband article for chemical examination. Hence, the rigour of Section 37 of the NDPS Act cannot be attached. Moreover, keeping in view the gender of the petitioners, considered in conjunction with the above circumstances, we are inclined to grant bail.
8. Accordingly, CRM(NDPS) 297 of 2024 is allowed, thereby granting bail to the petitioners on condition that the petitioners shall furnish bonds of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Court-in-charge (NDPS Act) cum Additional Sessions Judge, Second Court, Siliguri. The surety may be common for both the petitioners.
9. Moreover, the petitioners 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.
10. Moreover, the petitioners shall make themselves available on any such occasion when called by the Investigating Officer for the purpose of investigation and shall cooperate with the

investigation throughout and shall also not leave the territorial jurisdiction of the trial court throughout the period of investigation as well as during the trial and shall attend each and every date of trial as and when the same commences.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)