

JPD-36
Ct No.01
24.07.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 310 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Pradhan Nagar** Police Station Case No. **731** of **2023** dated **16.09.2023** under Sections **21(c)/22(c)/27A and 29** of the **NDPS Act, 1985**.

And

In the matter of: **Parimal Roy**

.... Petitioner

Mr. Subham Ghosh,
Mr. Mayank Roy

... for the petitioner

Mr. Abhijit Sarkar,
Mr. Subhasish Misra

... for the State

1. Learned counsel for the State seeks an adjournment after the hearing took place for some time. At this juncture, since most of the relevant documents are already annexed to the application, a copy of which is with counsel, we refuse such prayer.
2. The petitioner has made out several discrepancies in the process of seizure. First, whereas the contraband articles were allegedly contained in 11 individual packets, all of which were found in a single backpack, the backpack being marked as Exhibit-L as per

the FIR, it is found from the certification on correctness of inventory that the backpack was marked as Exhibit-G.

- 3.** That apart, learned counsel for the petitioner rightly points out that the provisions of Rule 10 of the NDPS Rules, 2022 were not complied with, since samples were not drawn from each of the packages and containers seized.
- 4.** Thirdly, we also find that the homogeneous brownish black coloured sticky substance which was received by the laboratory and marked as Exhibit S1 does not find mention in any manner in the certification of correctness of inventory, thus, creating a presumption of several discrepancies and inadequacies in the process of seizure and testing of the samples, which are the very premise of the prosecution case.
- 5.** Learned counsel for the State, while opposing the prayer for bail, points out that Rule 10(1) is circumscribed by Rule 10(2) of the 2022 Rules. In the present case, Sub-Rule (2) applies, since several packages and containers were seized together. As such, it is contended that there was no discrepancy in the process of seizure and/or chemical testing.
- 6.** We find from the FIR that there were 11 plastic packets in total containing the alleged contraband articles. Rule 10(2) contemplates a situation where all the packages and containers seized together are of identical size and weight, bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively

indicating that the packages are “identical in all respects”, in which case, the packages and containers may carefully be bunched in lots of not more than ten packages.

7. However, in the present case, as apparent from the FIR itself, the first packet contained 1.033 kgs of brown sugar whereas the rest of the packages are also not exactly identical as contemplated under Rule 10(2), varying between 100 to 102 grams each.
8. As such, we are of the considered opinion that even *prima facie*, Rule 10(1), and not Rule 10(2), should be applicable in the present case. That apart, the other discrepancies as indicated above also cast a doubt as to whether the petitioner was guilty of the offence, thereby giving a leeway to the court within the contemplation of Section 37(2) of the NDPS Act to grant bail to the petitioner.
9. Accordingly, CRM (NDPS) 310 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish a 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 (NDPS) at Siliguri.
10. 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.
11. 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.)