

AD-25
Ct No.01
Jalpaiguri
25.07.2024
B.Pal

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

CRM (NDPS) 320 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 18.07.2024 in connection with Pradhan Nagar Police Station Case No. 908 of 2023 dated 04.11.2023 under Sections 21(c), 22(c), 27A and 29 of the NDPS Act, 1985.

And

In the matter of: KAMAL BISWAS

...Petitioner

Ms. Sidhi Sethia,
Ms. Rima Sarkar,
Ms. Suparna Paul

... for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Biswarup Roy,
Mr. Sagnik Sankar Sikdar

... for the State

1. Learned counsel for the petitioner contends that the provisions of Section 52A as well as Rule 12 of NDPS Rules, 2022 were not complied with. Whereas the samples were sent for chemical examination much earlier, in the month of December, 2023, the certificate of correctness of inventory came forth only on January 6, 2024. Hence, the sending of the samples for chemical examination sans the certification itself vitiates the process.

2. Learned counsel for the State opposes the prayer for bail and hands over the case diary including a recording that one sealed envelope containing two sealed bottles of the contraband substance with description of the same, after maintaining all formalities as per rules, were being duly forwarded by the learned ACJM, Siliguri for chemical examination and opinion. Thus, it is argued that the said recording itself indicates that the samples were sent for chemical examination through the Court of the ACJM and as such, cannot be under any cloud of suspicion.
3. It is also argued that if there is any discrepancy in the materials on record, the same should be the subject matter of trial.
4. We find from the certification on correctness of inventory annexed at page 11 of the present application that, in no uncertain terms, the Judicial Magistrate, 1st Court at Siliguri observes therein that he/she has prepared the certificate of correctness of inventory, photographs and samples of seized contraband in his/her office. The newly sealed and labelled envelopes along with the certificate, the photographs and DVD containing the digital images were thereby handed over to the IO of Pradhannagar Police Station on January 6, 2024.
5. The above statement makes it amply clear that it was not only the certificate which was handed over subsequently to

the IO but also the “newly” sealed and labelled envelopes along with it.

6. Thus, there cannot be any manner of doubt that the Magistrate on January 6, 2024 did not hand over only the certificate but also the newly sealed and labelled envelopes containing the samples.
7. As per law, no sample can be sent for chemical examination without the certification of correctness, which is an implicit requirement of the sample which is sent for analysis.
8. Thus, the bare statement of the concerned police officer to the effect that he had complied with all formalities cannot be deemed credible in the context of the report of the Judicial Magistrate, 1st Class dated January 6, 2024, which has to be given primacy over the statement of the Investigating Officer.
9. Hence, we are of the view that there is *ex facie* doubt cast on the procedure of sending the samples for chemical examination, which entitles the petitioner to be extended the benefit of doubt.
10. Accordingly, CRM (NDPS) 320 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 (NDPS Act), Siliguri.

11. The petitioner shall not leave the territorial jurisdiction of the trial court throughout the period of trial and shall attend each and every date of trial.
12. Further, 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.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)