

AD-30
Ct No.01
Jalpaiguri
25.07.2024
SP

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

CRM (NDPS) 328 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Pradhan Nagar Police Station Case No. 998 of 2023 dated 01.12.2023 under Sections 21(c)/22(c)/27A/29 of the NDPS Act, 1985.

And

In the matter of: PANKAJ ROY.

. . . .for the petitioner

Ms. Radhika Agarwal Adv.
Mr. Dhiraj Lakhotia, Adv.
Ms. Meghana Joshi, Adv.
Ms. Kushi Kundu, Adv.

... for the petitioner

Mr. Abhijit Sarkar, Adv.
Ms. Sukanya Adhikary, Adv.

... for the State

1. Learned counsel for the petitioner contends that the petitioner is in custody for 237 days.
2. It is further argued that there is a violation of Section 52A of the NDPS Act read with Rules 13 and 14 of the NDPS Rules 2022. It is argued that the sample was received by the laboratory on January 11, 2024 but the report was filed on May 24, 2024 after a lapse of four and half months which is much beyond the stipulated outer limit as per Rule 14 of the 2022 Rules.

3. It is further submitted that the sample was sent for chemical analysis after 41 days from the date of inventorisation, which itself casts a doubt on the samples.
4. Learned counsel also seeks to argue that the petitioner is entitled to default bail in view of the outer limit of 180 days expiring on May 29, 2024 and the charge-sheet having been filed on June 4, 2024. It is submitted that as a matter of custom before the concerned Court, bail petitions are filed in the morning and as such it must have been that the bail petition was filed on June 4, 2024 prior to the charge-sheet being filed before the Court on the same date.
5. Learned counsel for the State seriously opposes the prayer for bail and contends that it is settled law that if the seals of the samples are intact, mere delay between the inventorisation and sending of the samples for chemical analysis is not fatal to the prosecution case.
6. That apart, due to the scarcity of designated chemical laboratories, some delay is reasonable even in furnishing the chemical analysis report.
7. Another contention has also been raised by the petitioner regarding no quantitative analysis having been done in respect of the samples. Such contention is also denied by the State.
8. We find three deficiencies on the part of the prosecution in the present case which catches the eye.

9. First, although the inventorisation was done much earlier, the sample was sent after 41 days, the delay remaining unexplained as of today. However, we concede to the limited extent that the same may be a valid subject matter for arguments in trial.
10. However, another important consideration is that we do not find from the chemical analysis report that there was any quantitative analysis as contemplated in Rule 14 of the 2022 Rules. One of the columns of the report indicates the method of qualitative analysis and the remarks column states that the sample contains Codeine Phosphate and hence comes under the NDPS Act, without any reflection as to quantitative analysis.
11. That apart, the delay of four and half months in furnishing the chemical analysis in Court is also crucial since the outer limit stipulated in Rule 14 of the 2022 Rules, under normal circumstances, is fifteen days. In the event there is some cogent reason for not furnishing the report within the said period, the laboratory has to send the qualitative analysis report within fifteen days, followed by a quantitative analysis report within fifteen days thereafter. Despite the dearth the chemical laboratories, the delay of more than three and half months even beyond the outer limit rather dents the prosecution case, at least for the limited purpose of creating a

doubt in so far as the applicability of Section 37 of the NDPS Act is concerned.

12. In such view of the matter, CRM (NDPS) 328 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 NDPS Act at Siliguri.
13. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend on each and every date of trial.
14. 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.)