

AD-31
Ct No.01
Jalpaiguri
25.07.2024
B.Pal

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

CRM (NDPS) 332 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 19.07.2024 in connection with Bhaktinagar Police Station Case No. 986 of 2023 dated 10.11.2023 under Sections 21(c), 22(c), 25 and 29 of the NDPS Act, 1985.

And

In the matter of: SAROJ GURUNG@SORAJ GURUNG@
SURAJ GURUNG

...Petitioner

Mr. Sanjay Mazoomder,
Ms. Sukanya Adhikary,
Mr. Rahul Ghatak,
Ms. Ambalika Roy

... for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas

... for the State

1. Learned counsel for the petitioner contends that Section 50(6) of the NDPS Act is violated as it is recorded in the order dated June 14, 2024 by the Judge, Special Court that the provisions of the said Section have not been complied with in the present case.
2. Learned counsel further argues that the samples were received by the laboratory on November 24, 2023 whereas the chemical analysis report was given by it on April 30, 2024 after the delay of about five months.

3. Thirdly, as per the complaint, one school bag was being carried by the three persons and as such, specific liability was not fixed on any of the persons.
4. It is next argued that the principle laid down in *Rabi Prakash's case* is applicable since the petitioner is already in custody for 260 days. Trial has not yet commenced and charges have not yet been framed, although the charge-sheet was filed on April 30, 2024.
5. Learned counsel for the State seriously opposes the contentions of the petitioner. It is argued that Section 50(6) of the NDPS Act is not applicable in the present case since the recovery was from a school bag and not from the person of any of the accused persons.
6. As regards the doubt sought to be cast by the petitioner on the specific liability of the co-accused persons not being fixed, learned counsel for the State argues that since there is an ingredient of common intention as well as criminal conspiracy between the accused persons, such argument is not acceptable, at least at this premature stage.
7. It is further pointed out that a reasonable delay in furnishing chemical examination report is acceptable, in view of the severe scarcity of appropriate designated chemical laboratories which conduct such tests. In so far as *Rabi Prakash's* proposition is concerned, it is argued that mere custody of 260 days is not sufficient for such consideration.

8. In any event, it is contended by the State that at this point of time, when the chemical report has already found place in the records, an argument of delay in filing the same does not lie in the mouth of the petitioner.
9. Heard learned counsel for the parties.
10. In so far as Section 50(6) is concerned, it is found from the order dated June 14, 2024 passed by the jurisdictional Court, that is, the Special Court, NDPS Act, 1st Court at Jalpaiguri that even as per the opinion of the said Court, it was true that no documents lie in case diary to show that Section 50(6) has been strictly complied; but the Court considered other aspects and found that there was no *other* glaring fault of the prosecution case diary for which bail could be granted. Thus, even as per the notion of the Trial Court, there might have been contravention of Section 50(6) which has not being countered by the jurisdictional Court itself.
11. In so far as the delay in chemical report being furnished is concerned, we find that the delay of over five months is unacceptable in view of the strict mandate of Rule 14 of the 2022 Rules. The prosecution cannot take shelter under the umbrella of scarcity of chemical laboratories in the State to defy the said rule in a gross manner. We have repeatedly held that a little bit of delay might be justifiable in the circumstances. However, a delay of five months is much

beyond the stipulated period and has to be taken as a glaring drawback in the case of the prosecution.

12. In so far as the argument of the State regarding criminal conspiracy is concerned, it is too early in the day to render conclusive findings on the same. However, since the written complaint itself does not carry any specific reference as to from which of the three accused persons the school bag was recovered and as in normal circumstances it is impossible to conceive that the three persons were jointly carrying a school bag, which is also not reflected in the complaint, we are of the opinion that specific complicity/involvement of the present petitioner cannot be ascertained at this juncture to apply the bar under Section 37 of the NDPS Act.
13. Under the aforesaid facts and circumstances, we are inclined to grant bail to the petitioner. Accordingly, CRM (NDPS) 332 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) at Jalpaiguri.
14. 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.
15. 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.)