

JPD-19  
Ct No.01  
29.07.2024  
S. Bag

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

**CRM (NDPS) 351 of 2024**

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Matigara Police Station Case No. 899 of 2022 dated 20.08.2022 punishable under sections 21(C)/29 of the N.D.P.S. Act, 1985.

And

In the matter of: Jayanta Das.

....petitioner

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

... for the petitioner

Mr. Nilay Chakraborty, Adv.  
Ms. Sukanya Adhikary, Adv.

... for the State

1. Learned counsel for the petitioner contends that the petitioner is already in custody for 709 days. Out of the 20 charge-sheet witnesses, only one has been examined.
2. Gross irregularity in the sampling is also pointed out. Whereas as per the records of the prosecution, 20 grams of the sample brown sugar was recovered, 10 grams of sample was sent to the laboratory, which is reflected from the certification of correctness of inventory. However, surprisingly, the forensic examination report indicates that

the plastic packet which was examined contained 15.3074 gms. (including plastic packet).

3. That apart, it is argued that there is contravention of Rule 14 of the 2022 NDPS Rules since six months passed in between sending of the report and the issuance of the FSL report.
4. Learned counsel for the State opposes the prayer for bail. Taking the last point first, it is argued that the 2022 Rules came into force on and from December 23, 2022 and the recovery was made much prior thereto. As such, the said Rules are not applicable in the present case.
5. Secondly, it is argued that a previous prayer for bail made by the petitioner was rejected by a coordinate Bench, where the same issues were substantially considered.
6. Learned counsel for the prosecution also contends that since the FSL report indicates the total weight of the sample included the plastic packet, the weight might have varied from the sample sent.
7. Heard learned counsel for the parties.
8. Apart from the fact that the petitioner is already in custody for 709 days and only one out of 20 charge-sheet witnesses has been examined till date, which makes it uncertain as to how long further the petitioner has to be behind the bars, we are completely satisfied with the gross discrepancy brought to our notice by the petitioner with regard to the sampling.
9. Although it might very well have been that a quantity of 10 grams was drawn at the time of certification on the

correctness from the total recovered quantity of 20 grams, it defies logic as to how the said sample increased by 5.7074 grams in the laboratory.

10. The argument made that the weight of the packet increased the total weight is specious, since the weight of the packet, by no stretch of imagination, could have been 5.3074 grams, which would be an absurd submission particularly in view of the nature of the contraband article seized, which was brown sugar, where even a decimal point of weight variance may make a substantial difference in the conviction.
11. As such, such gross discrepancy between the 10 grams of sample sent and the 15.3074 grams of sample tested makes it evident, at least *prima facie*, that the sample might have been mixed up with that of some other case or there might have been some foul play in between.
12. Thus, we cannot at all apply the rigour of section 37 of the NDPS Act in such *prima facie* fishy circumstances.
13. Hence, we are inclined to grant bail to the petitioner.
14. In such view of the matter, CRM (NDPS) 351 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 learned Special Court (NDPS Act) 2<sup>nd</sup> Court at Siliguri.

15. 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.
16. 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.
17. It is, however, made clear that the observations made above are tentative for the purpose of considering the bail application only and shall not prejudice/influence the learned Trial Court in coming to its own conclusions in trial after considering all materials on record.

**(Sabyasachi Bhattacharyya, J.)**

**(Prasenjit Biswas, J.)**