

JPD-21
Ct No.01
29.07.2024
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 353 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973/Under Section 483 of the Bharatiya Nagarik Suraksha Sanhita in connection with Bagdogra Police Station Case No. 366 of 2023 dated 01.08.2023 under Sections 21(c)/29 of the NDPS Act.

And

In the matter of: **Md. Raju Sk.**

.... petitioner

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

... for the petitioner

Mr. Nilay Chakraborty
Mr. Sanjiv Das

... for the State

1. Learned counsel for the petitioner submits that the petitioner is already in custody for almost one year.
2. Secondly, it is submitted that the FSL report clearly indicates that the sample was received in packets in leaked condition.
3. That apart, the marking of the samples was done in the laboratory itself and a single packet with the denomination Label S1 was sent for such examination, which is violative of Rules 9, 10 and 12 of the NDPS Rules, 2022.
4. It is further argued that the provisions of Rule 14 have also been contravened, since the chemical report was issued much after the outer limit as stipulated therein, that is, about after four months.

5. Learned counsel next argues that there is a contravention of Section 42(1) of the NDPS Act inasmuch as the vehicle from which the contraband was seized was a private vehicle. As such, in the absence of any intimation within 72 hours as to how the investigating team explained the non-issuance of search warrant prior to effecting the arrest, the very process of arrest is vitiated.
6. Learned counsel argues that only 300gms. of the contraband was recovered from the petitioner whereas the principal accused, from whom 600 gms. and 298gms. packet were recovered, is already enlarged on bail.
7. However, in her usual fairness, learned counsel points out that the grant of bail to the principal accused was on the ground of his advanced age.
8. Learned counsel for the State categorically opposes the prayer for bail and contends that it is at best arguable in trial as to whether there was contravention of Section 42, although learned counsel also controverts such allegation.
9. Insofar as the 'leaked packets' argument is concerned, learned counsel places specific reliance on the concerned sentence in the FSL report which refers to paper packets.
10. It is insinuated by learned counsel for the State that the paper packet might have been leaked but the transparent self sealing plastic packets containing the samples were not.

- 11.** Learned counsel also points out to Clause 10 of the FSL report which shows that intact and tallied-with specimen seal was forwarded by the forwarding authority.
- 12.** With regard to violation of Rule 14, it is contended that due to heavy pressure on limited number of available certified laboratories, a miniscule delay cannot be said to vitiate the entire process.
- 13.** Learned counsel further argues that the quantity of contraband seized was huge, to the tune of 898gms. Moreover, a large amount of cash was also recovered from the accused persons, which clearly indicates that the petitioner and the other co-accused were engaged in the business of drug trafficking.
- 14.** Upon a careful perusal of the materials, we are of the opinion that the argument as to contravention of Section 42, NDPS Act would be a fit case for trial but it would be premature at this stage to enter into a mini trial by the bail court on such aspect.
- 15.** However, there are two other aspects in the matter which cannot be lost sight of.
- 16.** First, the delay of about four months in the entire process of issuance of chemical report cannot be brushed aside as a merely technical violation of Rule 14 of the NDPS Rules, 2022, since the outer limit for furnishing the chemical analysis report under the said provision is fifteen days. Even if the report cannot be furnished within the said period, the laboratory is duty bound to send a qualitative report within fifteen days, followed by a

quantitative report within the next fifteen days, which has been grossly violated by about three months in the present case.

- 17.** The other aspect of the matter cannot be lost sight of as well.
- 18.** The description of the samples in the FSL report is contradictory with the caption at Clause 10. Whereas Clause 10 states that the condition of the seals on the packets was intact and tallied with specimen seal forwarded by the forwarding authority, it is also stated in the description portion that *“the said paper packet contained three no.s of transparent self sealing plastic packets in leaked condition”*.
- 19.** There cannot be any ambiguity in construing such sentence.
- 20.** The expression “in leaked condition” clearly qualifies the self-sealing plastic packets and not the paper packet, as is evident from construction of the sentence itself.
- 21.** The sentence breaks itself into two parts, the first part dealing with the paper packet containing the self sealing plastic packets and the second stating that the said plastic packets were found in leaked condition.
- 22.** Hence, the caption against Clause 10 cannot save the prosecution *prima facie*, since it may very well be that the seals of the packets were intact whereas the packet themselves were leaked.
- 23.** Even a micro-leak in the packets containing the test samples of the allegedly seized brown sugar may be fatal to the prosecution case in NDPS matters.

- 24.** At least for the purpose of Section 37 of the NDPS Act, there is sufficient reason on the above grounds to find that there is palpable doubt as to the veracity of the samples which were actually tested by the laboratory.
- 25.** In such view of the matter, the petitioner is entitled to the benefit of doubt and accordingly this court is of the opinion that bail should be granted.
- 26.** Accordingly, CRM (NDPS) 353 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bonds of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of Learned Judge, Special Court, NDPS Act at Siliguri.
- 27.** 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.
- 28.** 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.)