

JPD-25
Ct No.01
29.07.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 357 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Siliguri** Police Station Case No. **1058** of **2022** dated **13.11.2022** under Section **20(b)(ii)(c)** of the **NDPS Act, 1985**.

And

In the matter of: **Chandan Rajbhor**

.... petitioner

Mr. Arunava Paul

... for the petitioner

Mr. Nilay Chakraborty, Ld. APP,
Ms. Sukanya Adhikary

... for the State

1. The petitioner's application for bail was last rejected on May 13, 2024.
2. We find from the said order that the ground stated therein was that a coordinate Bench had rejected the bail prayer in February, 2024 and that narcotic above commercial quantity was recovered from the petitioner as well as that the trial was in progress.
3. The primary consideration in the said order was rejection of bail by a coordinate Bench.

4. The most elaborate order which we find among the four previous rejections was the one dated February 22, 2024 which has been strongly relied on by the prosecution.
5. In the said order, it was *inter alia* recorded that in the instant case, the earlier three applications were rejected and the court did not find any ground to take an exception to Section 37 of the said Act. In the instant case, it was further observed, the Court did not find that the total weight of the contraband as shown in the seizure list sees a substantial variation at the time of taking steps under Section 52A of the said Act. Even if there is a variation, the Division Bench went on to observe, it is a matter of great concern with regard to the officials who shall be answerable for such variation and for which an appropriate explanation must be asked by the higher officials.
6. It is well-settled that in criminal jurisprudence, a previous rejection of bail does not operate as *res judicata*; more so, since the same was in the month of February, 2024, which was five months back.
7. With utmost respect to the Division Bench passing the order dated February 22, 2024, if it was of the opinion that the variation is a matter of great concern which requires the officials to be answerable, there could not have been any plausible reason as to not extending the benefit of mitigation of Section 37 to the petitioner.

- 8.** It is palpable from the certification on correctness annexed at page-16 of the present petition that even as per the said certification by the Judicial Magistrate, which is considered to be a primary plinth of prosecution in an NDPS Act, the bags which were brought in by the Investigating Officers were found to contain contraband item after weighing Exhibit – ‘A’ as 10 kg 420 grams and Exhibit – ‘B’ as 10 kg 040 grams, though the inventory prayer by the concerned I.O. of the said item quantity was different, being 11 kg 100 grams in respect of Exhibit – ‘A’ and 12 kg 500 grams in respect of Exhibit - ‘B’.
- 9.** Thus, it is evident that there was a gross discrepancy between the weight of the contraband for which inventory was sought and the one which was actually produced for certification, which vitiates the presumption of Section 37 of the NDPS Act.
- 10.** Accordingly, the petitioner is entitled to benefit of doubt, alleviating the strict rigours of Section 37.
- 11.** Accordingly, CRM (NDPS) 357 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish a 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) at Siliguri.
- 12.** 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.

- 13.** 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.)