

JPD-28
Ct No.01
29.07.2024
S.Pal

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

CRM (NDPS) 360 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with New Jalpaiguri Police Station Case No. 905 of 2023 dated 17.09.2023 under Sections 20(b)(ii)(c)/23(c)/29 of the NDPS Act, 1985.

And

In the matter of: Mintu Sarkar

...Petitioner

Mr. Sudip Guha

... for the petitioner

Mr. Abhijit Sarkar,
Mr. Aniruddha Biswas

... for the State

1. Learned counsel for the petitioner contends that the petitioner is in custody for 317 days.
2. Rule 14 of the NDPS Rules, 2022 was violated inasmuch as the chemical analysis report was issued five months after it was sent to the laboratory. Thirdly, since the seizure was made from a private vehicle, the provisions of Section 42 of the NDPS Act were violated since the search was conducted without any warrant and without any intimation within the next 72 hours as contemplated therein.

3. Learned counsel for the State opposes the prayer and controverts the argument as to Section 42 of NDPS Act. Regarding the delay in chemical analysis, it is submitted that the prosecution had no hand in that and it did its duty by sending the sample in due time.
4. We are of the opinion that the gross contravention of Rule 14 of the NDPS Rules, which is mandatory in nature, by occasioning of delay of about four months beyond the outer limit, is self-sufficient to vitiate the process of seizure in the present case.
5. That apart, although the question of Section 42 contravention is arguable, fact remains that the petitioner is already in custody for 317 days. In view of the alleviating circumstances narrated above, we are inclined to grant bail.
6. Accordingly, CRM(NDPS) 360 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) First Court at Jalpaiguri.
7. Moreover, 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.

8. Moreover, 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.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)