

JPD-60
Ct No.01
02.08.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 395 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with **Bhaktinagar** Police Station Case No. **719** of **2023** dated **16.08.2023** under Sections **21(c)/22(c)/25/29** of the **NDPS Act, 1985**.

And

In the matter of: **Durga Soren and others**

.... petitioners

Mr. Arjun Chowdhury,
Ms. Pratusha Dutta Chowdhury,
Mr. Koushik Kr. Kanu,
Ms. Tulip Saha

... for the petitioners

Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Kallol Nag

... for the State

1. The petitioners are in custody for 417 days and charges have not yet been framed.
2. Learned counsel for petitioners points out at the outset that although the application for bail of the petitioner nos.1 and 2 along with another co-accused person made jointly was not pressed on July 23, 2024 insofar as the present petitioner nos.1 and 2 are concerned, certain points were not urged at that relevant point of time, nor decided in the said order insofar as the present petitioner nos. 1 and 2 are concerned.

3. It is pointed out that the seizure was done on August 16, 2023 and the inventory took place on August 21, 2023. The samples were sent on August 24, 2023. However, the report was furnished by the laboratory on January 03, 2024. Hence, there was a gross violation of Rule 14 of the NDPS Rules, 2022 as well as Section 52A of the NDPS Act.
4. Learned counsel for the State opposes the prayer for bail and submits that there was no violation of Section 52A of the NDPS Act. It is further submitted that the delay occasioned in furnishing the chemical report was due to paucity of licensed laboratories who are competent to conduct such tests in the State. That apart, learned counsel for the State points out that the self-same application for the petitioner nos.1 and 2 was not pressed with regard to them as recently as on July 23, 2024.
5. Insofar as the order dated July 23, 2024 is concerned, although the application was not pressed with regard to the petitioner nos.1 and 2, in criminal matters, there is no scope of applicability of principles akin to Order IX or Order XXIII of the Code of Civil Procedure and since the issues urged now were not adjudicated upon by the court, there is no bar as such in taking up the matter with regard to the present petitioner nos.1 and 2.
6. We find from the records that although there is no clear proof of violation of Section 52A of the NDPS Act as such, Rule 14 of the NDPS Rules, 2022 has undoubtedly been flouted in a gross manner, since whereas the outer limit for furnishing a chemical

analysis report is 15 days under normal circumstances and in exceptional cases, qualitative report is to be furnished within 15 days and thereafter within further 15 days quantitative report is to be filed, in the present case, the delay was about five months and, as such, there was gross violation of Rule 14. Despite taking into consideration the dearth of appropriate laboratories, the above delay is much beyond the statutory limit, which itself mitigates the rigour of Section 37 of the NDPS Act.

- 7.** Accordingly, CRM (NDPS) 395 of 2024 is partially allowed, thereby granting bail to the petitioner nos.1 and 2, namely, Durga Soren and Pradip Munda respectively, on condition that the petitioner nos.1 and 2 shall furnish bond of Rs.10,000/- each 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. The sureties may be common in respect of both the petitioners.
- 8.** The petitioner nos.1 and 2 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.
- 9.** Further, the petitioner nos.1 and 2 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.

- 10.** Insofar as the petitioner no.3, namely, Rashid Sk, is concerned, although the present points were not urged on the previous occasion of rejection of bail, since no challenge has been preferred with regard to the last rejection of the bail prayer of the petitioner no. 3, which was as recent as on July 23, 2024, we do not find any reason to reopen the said verdict insofar as the petitioner no.3 is concerned.
- 11.** However, it will be open to the petitioner no.3 to pray for similar prayer before the next Circuit.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)