

28. 07.11.2024
Court
No.1 (Tanmoy)

Allowed

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

CRM (NDPS) 474 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 / Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, arising out of **Kumargram** Police Station Case No. **43/2024** dated **03.03.2024** under Sections **18(b)/25/29** of the NDPS Act, 1985. Charge-sheet no. 132/2024, submitted under Sections **18(b)/25/29** of the NDPS Act, 1985.

And

In the matter of: - **Himmet Singh & Ors.**

...petitioners.

Mr. Sourav Ganguly
Mr. Gopal Roy
Ms. Rishita Chakraborty
Mr. Bibek Tarafder

...for the petitioners.

Mr. Ujjwal Luksom
Mr. Dhiman Sil

...for State.

Dictated by Arijit Banerjee, J.

1. The petitioners say that they are in custody for 249 days. They pray for bail on the ground of non-compliance with the provisions of Section 42(2) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, which reads as follows:-

“42. Power of entry, search, seizure and arrest without warrant or authorization.- ...

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

2. Learned Counsel relies on a co-ordinate Bench decision of this Court in the case of ***Abdul Rakib v. The State of West Bengal [CRM (NDPS) 546 of 2023]*** in support of his submission. He has also placed before us a decision of the Hon'ble Supreme Court in the case of ***Boota Singh & Ors. v. State of Haryana***, reported at **2021 SCC OnLine SC 324**.
3. Learned Advocate for the State, in his usual fairness, admits that there was non-compliance with Section 42(2) of the NDPS Act, 1985.
4. We see from the judgments cited before us that Section 42(2) of the NDPS Act has been held to be a mandatory provision. Non-compliance with the said provision is liable to render a conviction bad.
5. In that view of the matter, since admittedly, the provisions of Section 42(2) of the NDPS Act were not complied with, the restrictions in Section 37 of the NDPS Act, 1985 stand sufficiently rebutted.
6. We, therefore, allow the petitioners' prayer for bail.
7. Accordingly, we direct that the petitioners, namely, **1. Himmet Singh, 2. Sohan Lal Gurjar, 3. Radheyshyam Jat** shall be released on bail upon furnishing a bond of Rs.25,000/- (Rupees Twenty Five Thousand) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act, Alipurduar, subject to condition that the

petitioners shall appear before the Trial Court on each and every date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973 / Section 355 of Bharatiya Nagarik Suraksha Sanhita, 2023, and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

8. In the event the petitioners fail to adhere to any of the conditions stipulated above without any justifiable cause, the Trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.
9. The application for bail being CRM (NDPS) 474 of 2024 is accordingly disposed of.
10. Criminal Section is directed to make available urgent photostat certified copies of this order to the parties, if applied for, upon compliance with all necessary formalities.

(Arijit Banerjee, J.)

(Biswaroop Chowdhury, J.)