

11.11.2024
Item no. 11.
Court No.1.
AB
(Allowed)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

CRM (NDPS) 477 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, 2023 in connection with Falakata Police Station Case No.82 of 2024 Dated 1.3.2024 under Sections 21(c)/22(c)/27(a)/29 of the NDPS Act, 1985

And

In the matter of : Saddam Hussein @ Saddam Hossain & Anr.

.....Petitioners.

Mr. Sourav Ganguly,
Mr. Gopal Roy
Ms. Rishita Chakraborty.....for the Petitioners.

Mr. Ujjwal Luksom,
Mr. Chattu Roy for the State.

Dictated by Arijit Banerjee, J.

1. The petitioners say that they are in custody for 255 days. They pray for bail on the ground of non compliance with the provisions of Section 42(2) of the 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 coordinate Bench decision of this Court in the case of **Abdul Rakib Vs 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. Vs 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 **Saddam Hussein @ Saddam Hossain and Hafiful Rahaman** shall be released on bail upon furnishing a bond of Rs.25,000/-each, with two sureties of Rs.12,500/-each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the NDPS Act at Alipurduar, and on further condition

that the petitioners shall remain within the jurisdiction of local police station and they shall report to the Officer in charge of that police station once in a fortnight until further orders.

8. The petitioners shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever.
9. In the event the petitioners fail to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioners' bail in accordance with law without further reference to this Court.
10. The application for bail is, accordingly, allowed.
11. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Biswaroop Chowdhury, J.)

(Arijit Banerjee, J.)

