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11-11-2024
(ct. no.01)
S. De
(Allowed)

**THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

CRM (NDPS) 485 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in connection with **Sahebganj Police Station Case No. 530 of 2024 dated 10.09.2024 under Sections 20(b)(ii)(c)** of the Narcotic Drugs & Psychotropic Substances Act 1985.

- A n d -

In the matter of : Sachin Roy.

.... Petitioner.

Mr. Subham Ghosh,
Mr. Mayank Roy,

... For the Petitioner.

Mr. Nilay Chakraborty, Ld. APP
Mr. Dhiman Sil,

... For the State.

Order dictated by Arijit Banerjee, J.

1. The petitioner says that the samples were sent to FSL prior to certification by the concerned Magistrate. This is gross infraction of the provision of Section 52A of the NDPS Act. He prays for bail on that ground. He relies on an order of this Bench passed on October 4, 2024, in CRM (NDPS) 444 of 2024.
2. Learned State advocate, while opposing the prayer for bail, says that 200 kgs. of Ganja was seized from the exclusive possession of this petitioner who is the sole accused person. However, in his usual fairness, he says, after consulting the case diary that the samples were sent to the FSL by the Investigating Officer even before the same was certified by the Magistrate as required by Section 52A of the NDPS Act.

3. We have also seen the materials in the case diary. It appears that the samples were sent to the FSL by the Investigating Officer on September 20, 2024. However, the concerned Judicial Magistrate signed the certificate on September 27, 2024, i.e. after the samples were sent to FSL.
4. In the order dated October 4, 2024, relied upon by the petitioner, we had referred to a decision of the Hon'ble Supreme Court in the case of Mohammed Khalid & Anr. Vs. State of Telangana reported in (2024) 5 Supreme Court Cases 393, in support of his submission that the provisions of Section 52A of the NDPS Act are mandatory in nature. Without compliance of such provisions, the FSL report would be a useless piece of paper and cannot be admitted in evidence.
5. In view of the breach of the mandatory provision of Section 52A of the NDPS Act and in view of the aforesaid Supreme Court judgment, we are constrained to allow the petitioner's prayer for bail.
6. Accordingly, we direct that the petitioner, namely, **Sachin Roy** shall be released on bail upon furnishing a bond of Rs. 25,000/ 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), 1st Court, Coochbehar and on further conditions that he shall not leave the jurisdiction of the concerned police station and shall report to the Officer-in-Charge of the said police station once in a fortnight, until further orders.

7. The petitioner 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 in any manner whatsoever.
8. In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.
9. The application for bail is, accordingly, allowed.
10. 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.)