

28.11.2024
Item No.6
Court No.1
(GB)
(Allowed)

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

CRM (NDPS) 490 of 2024

In Re: - An application for bail under section 439 of the Code of Criminal Procedure, 1973/Section 483 of the B.N.S.S. 2023 in connection with **Bagdogra** Police Station Case No.158/2024 dated 27.04.2024 under Section 21(c)/23(c)/29 of NDPS Act, 1985.

And

In the matter of: **Md. Shaherul@ Saherul**

....Petitioner.

Mr. Arjun Chowdhury,
Ms. Pratusha Dutta Chowdhury,
Ms. Riya Agarwal,
Ms. T. Saha,
Mr. Dibyajyoti Bhowmick

...for the Petitioner.

Mr. Saikat Chatterjee,
Mr. Dhiman Sil

... for the State.

1. The learned advocate representing the petitioner submits that sampling, inventorization and certification of the contraband articles were done in contravention of the provisions of Section 52A of the NDPS Act. He submits that in the present case, the sample was sent for chemical examination before certification. In support of his contention he relies on two decisions of this Court in the matter of **Shiv Kumar and Another** passed in **CRM (NDPS) 491 of 2024** and **Situ Sk and Others**, passed in **CRM (NDPS) 676 of 2023**. Records reveal that the the petitioner is in custody for 7 months.
2. However, the learned advocate representing the State produces the case diary and vehemently opposes such submissions advanced by the

learned advocate for the petitioner. Mr. Chatterjee seeks to impress upon us that seizure, inventory, sampling and certification was done by following the prescribed procedure and the entire process was completed on April 30, 2024.

3. Admittedly, as per the legislative mandate incorporated in Section 52 A(2) of the NDPS Act, immediately after seizure, the follow up actions, namely, inventory, sampling and certification are to be completed and thereafter the sample is required to be sent for chemical examination. The Hon'ble Apex Court in a catena of decisions repeatedly directed the investigating agency to complete all such process promptly, so that any possibility of manipulation or false implication can be ruled out.
4. From the records, it appears that the contraband articles were allegedly seized on April 27, 2024. Thereafter, following the order passed by the concerned court on April 29, 2024, the contraband articles were handed over to the Investigating Officer. The Investigating Officer handed over the contraband articles to the Officer-in-Charge of the concerned police station on April 30, 2024 and it was stated that on April 30, 2024, inventory was made and sample was taken. The case diary, as appearing from page 93, indicates that the certification was done on May 7, 2024. As per the materials in the case diary the contraband articles were sent for chemical examination on May 2, 2024.
5. Taking note of this infraction of the provisions of Section 52A of the NDPS Act and taking the same view as the coordinate Bench expressed in the case of Shiv Kumar (supra) and Situ Sk. (supra) and on further consideration that as 18 persons have been cited in the charge-sheet,

there is no possibility of early conclusion of trial, we are inclined to allow the prayer. The charge-sheet was submitted on October 15, 2024, but charges have not been framed.

6. Under such circumstances, we are inclined to enlarge the petitioner on bail as we are of the view that constitutional liberty overrides the statutory embargo under Section 37 of the NDPS Act. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.25,000/- with two sureties of equal amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court, under NDPS Act, Siliguri. The petitioner shall appear before the learned trial court on each and every date of hearing and shall not intimidate the witnesses or tamper with any evidence. The petitioner shall not leave the jurisdiction of the trial court. In case of failure to comply with the above directions, the learned trial Judge shall be entitled to cancel the bail without further reference to this Court.
7. The application for bail, being CRM (NDPS) 490 of 2024 is, thus, disposed of.
8. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Shampa Sarkar, J.)

(Partha Sarathi Chatterjee, J.)