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

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

CRM (NDPS) 495 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 **Birpara Police Station Case No. 88 of 2024 dated 22.05.2024 under Sections 21(c)/17(b)** of the Narcotic Drugs & Psychotropic Substances Act 1985.

- A n d -

In the matter of : John Paul Tigga.

.... Petitioner.

Mr. Sourav Ganguly,
Ms. Madhushri Dutta,
Mr. Gopal Roy,
Ms. Rishita Chakraborty,

... For the Petitioner.

Mr. Ujjwal Luksom,
Mr. Chattu Roy,

... For the State.

Order dictated by Arijit Banerjee, J.

1. The petitioner says that he is in custody for 174 days. he prays for bail on the ground of non-compliance with the provision of Section 42(2) of the NDPS Act, 1985, which reads as follows :

“42(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 Vs. The State of West**

Bengal (CRM (NDPS) 546 of 2023) as referred to in 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 (2021 SCC OnLine SC 324)**.

3. Learned State advocate says that commercial quantity of Phensedyl Syrup containing Codine Phosphate was recovered from this petitioner. However, in his usual fairness, he admits that there was non-compliance with Section 42(2) of the NDPS Act.
4. We see from the judgments placed before us that Section 42(2) of the NDPS Act has been held to be a mandatory provision. Non-compliance with such provision is liable to render a conviction bad. 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 stand sufficiently diluted. We, therefore, allow the petitioner's prayer for bail.
5. Accordingly, we direct that the petitioner, namely, **John Paul Tigga** 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), Alipurduar 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.

6. 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.
7. 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.
8. The application for bail is, accordingly, allowed.
9. 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.)