

03.12.2024
SL No.21
s.biswas
(Allowed)

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

C.R.M. (NDPS) 534 of 2024

In Re: - An application for bail under Section 483 of the BNSS in connection with **Naxalbari** P.S. Case No. **44/2024** dated **22.03.2024** under Sections **21(c)/22(c)** of the NDPS Act.

And

In the matter of: **Matlu Sheikh**

....Petitioner

Mr. Subham Ghosh

Mr. Mayank Roy

...for the Petitioner

Mr. Nilay Chakraborty, APP

Ms. Sukanya Adhikary

...for the State

1. Petitioner prays for bail on the ground of prolonged detention and violation of the provisions of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'). According to the petitioner, although seizure and inventory was done on April 18, 2024, the certificate of correctness of inventory was issued by the Magistrate on May 7, 2024. Prior to issuance of the certificate of correctness, the sample was sent to the laboratory for chemical examination on April 24, 2024. The certificate produced before us is dated May 7, 2024.
2. Mr. Chakraborty, learned Additional Public Prosecutor representing the State, vehemently opposes the prayer for bail and submits that the certificate granted by the

Magistrate would indicate that the sample and the photograph were produced by the Investigating Officer before the Magistrate on April 18, 2024 at his chamber and the same was found to be proper and correct by the learned Magistrate. Only because the certificate was issued on May 7, 2024, such fact would not vitiate the procedure followed by the prosecution. Mr. Chakraborty has handed over the photographs of the samples which were sealed and labelled with the date as April 18, 2024. He submits that prosecution could not be blamed for the delay committed by the Magistrate.

3. We have considered the materials on record. We have considered the provision of Section 52A(2)(a)(b)(c). The Hon'ble Apex Court has time and again held that compliance of Section 52A of the said Act is mandatory. Rule 13 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 also lends support to the contentions of the petitioner.
4. Considering the above aspects, the period of detention, the fact that 13 witnesses have been cited, we are inclined to grant bail to the petitioner on the touchstone of Article 21 of the Constitution of India.
5. 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 Special Court under NDPS Act, Siliguri, subject to the condition that the petitioner shall appear before the learned trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future. The petitioner shall not leave the jurisdiction of the trial court until further orders.

6. In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail of the petitioner without any further reference to this Court.
7. The application for bail is, thus, allowed.
8. All parties shall act on the basis of the server copy of the order.

(Partha Sarathi Chatterjee, J.)

(Shampa Sarkar, J.)