

05.12.2024
SL No.11
s.biswas
(Allowed)

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

C.R.M. (NDPS) 561 of 2024

In Re: - An application for bail under Section 483 of the BNSS corresponding to Section 439 of the Cr.P.C. in connection with **sILIGURI** P.S. Case No. **430/2024** dated **06.05.2024** under Sections **21(C)/22(C)/25/29** of the NDPS Act.

And

In the matter of: **Md. Samim Sk**

....Petitioner

Mr. Prajnadeepta Roy
Ms. Sohini Kundu

...for the Petitioner

Mr. Ujwal Luksom
Mr. Biswarup Roy

...for the State

1. The petitioner submits that there was a contravention of the mandate of provisions of Section 42(2) of the NDPS Act, at the time of alleged seizure of the contraband articles. He places reliance upon a judgment in the matter of *Boota singh and others vs. State of Haryana* reported in (2021) 19 SCC 606 and submits that such contravention is enough to vitiate the entire trial. Apart from that, he also takes the plea that the petitioner is in custody for a period of six months and charge has not yet been framed. Moreover, 24 persons have been cited as witnesses and there is no likelihood of early conclusion of trial. On such grounds he prays for bail.
2. Learned counsel appearing on behalf of the state produces the case diary and vehemently opposes the prayer for bail. He submits that contravention of any provisions of Section 42(2)

of the NDPS Act, can be agitated at the time of trial and such point cannot be raised at the time of pressing an application for bail.

3. Heard the learned advocates. Perused other materials on record including the case diary. From the charge-sheet, it is evident that 24 persons have been cited as witnesses. The charge-sheet was submitted on September 30, 2024, but charges have not yet been framed. There is hardly any progress since filing of the charge-sheet. We are of the opinion that there is no possibility of conclusion of the trial in the near future. The other co-accused namely Samil Alam Ansari @ Sunny Alam Ansari was granted bail in CRM (NDPS) 531 of 2024, by this court.
4. Under such circumstances, we are inclined to grant bail on the ground that prolonged incarceration of the petitioner militates against the provisions of Section 37 of the NDPS Act. 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, 2nd Special Court under NDPS Act at Siliguri, subject to the condition that the petitioner shall appear before the learned trial court on each and every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence. The petitioner shall not leave the jurisdiction of the trial court until further orders.

5. In the event the petitioner fails to comply with the conditions as stated hereinbefore, it is open to the trial court to cancel the bail of the petitioner without any further reference to this Court.
6. The application for bail is, thus, allowed.

(Partha Sarathi Chatterjee, J.)

(Shampa Sarkar, J.)