

12.06.2025
Item no.40(DL)
Court No.29
srm
(Rejected)

C.R.M.(NDPS) 437 of 2025

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 corresponding to Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Lalgola Police Station Case No.899 of 2024 dated 02.09.2024 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985;

And

In the matter of : **Tosikur Ahamed @ Nawabab**

.... Petitioner

Mr. Arnab Chatterjee,
Mr. Anisur Rahaman

...for the Petitioner.

Mr. Subhamay Bhattacharya,
Mr. Aritra Bhattacharya

... for the State.

120 bottles of Phensedyl syrup containing codeine phosphate was allegedly recovered from the joint possession of the petitioner and the petitioner is in custody for about 9 months. The learned counsel for the petitioner strenuously argued that the statement of a constable, Rafiqul Sk. as recorded during investigation states that he deposited the sample to the office of CFSL on 23rd September, 2024 whereas the forensic reports dated 28.1.2025 and 11.2.2025 state that the forensic examination was done in connection with the sample received *vide* Memo No.167 dated 20th September, 2024. Accordingly, there is an anomaly and it is not clear whether the said report relates to the alleged seizure made from the joint possession of the present petitioner. He further submits that there is clear non-compliance of the statutory provision laid

down under Section 52A of the NDPS Act and for all these reasons he is entitled to be released on bail.

Learned counsel appearing on behalf of the State vehemently opposed the bail prayer and contended that whether there is any anomaly in mentioning the date in the report submitted by the CFSL shall be decided at the time of trial but during examination it has been established that the sample which was sent from the seized article contains narcotic substance. He further submits that the plea taken by the petitioner that there was gross irregularity in sampling cannot be the subject matter for consideration of a bail prayer. He further submits that the Judicial Magistrate can also be examined during trial by the court invoking its jurisdiction under Section 311 of the Code of Criminal Procedure. He further submits that one of the charge sheeted accused is still absconding and for which the charge could not be framed as yet.

Having considered the submissions made by the parties and materials collected so far, *prima facie*, it suggests that the narcotic substance containing codeine phosphate has been recovered from the joint possession of the petitioner and as such the restrictions imposed in Section 37 of the NDPS Act clearly attracts in the present case against the petitioner. The issue relates to the anomaly regarding the date mentioned in the forensic report shall be kept open for adjudication during trial but at this stage since rigour of Section 37 of the NDPS Act attracts in respect of the present petitioner, the prayer for bail is considered and rejected.

Accordingly, CRM (NDPS) 437 of 2025 is disposed of.

However, the trial court is requested to make every endeavour to expedite the trial.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)