

05.08.2025
Item no. 20 & 21
Ct. No. 29
Rejected
SR

C.R.M. (NDPS) 511 of 2025

In Re:- An application for Bail under section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 439 of the Code of Criminal Procedure, 1973 in connection with NDPS 05/24 S.T. No.01(09)2024 arising out of Baruipur Police Station Case No.104 of 2024 dated 22.01.24 under Section 21(c)/29 of the NDPS Act, 1985.

In the matter of : ***Raj Kumar Halder alias Siraj***
.... Petitioner.

With
C.R.M. (NDPS) 655 of 2025

In the matter of : ***Sanjib Dolui***
.... Petitioner.

Mr. Souvik Mitter	
Mr. Angshuman Chakraborty	...for the Petitioner (in both the matters)
Mr. Ranadeb Sengupta	
Mr. Subhasish Datta	... for the State. (in item no. 20)
Mr. Md. Adil Badr	
Mr. Samarjit Balial	... for the State (in item no. 21)

Prosecution case is that 250 grams of Heroin was recovered from two Scooties for which four accused persons are involved out of which two are the present petitioners. It is further submitted that the petitioners are in custody for about one year seven months.

Mr. Mitter, learned counsel appearing on behalf of both the petitioners submits that prosecution proposed to examine thirteen witnesses out of which they could examine so far only one witness, namely, PW 1 and from his statement, it is clear that the prosecution has not

complied mandatory provision of Section 42(2) of the NDPS Act, and, as such, the entire trial is liable to be vitiated. He further submits that since there was no compliance of Section 42 of the NDPS Act, there is no ground for believing that the petitioners have committed alleged offence. In this context, he further contended that PW 1 in his deposition has stated that on 21.01.2024 he received a source information, diarized the same and as per instruction of IC, Baruipur Police Station, had been to the place to act on the basis of the information but in the cross-examination he stated that the copy of the said GDE has not been forwarded to his superior, which reflects that there was a flagrant violation of Section 42 of the NDPS Act, since the information was not communicated to his superior in writing stating his reasons for belief. In this context, the petitioners relied upon the judgment of *Sarija Band @ Janarthani @ Janani & Anr. v. State Through Inspector of Police* reported in (2004) 12 SCC 266 wherein the contention of the prosecution was that though compliance of Section 42 is a mandatory provision but it cannot be considered while considering a bail application, which was accepted by the High Court. However, when the matter came up before Apex Court bail was granted to the petitioner. In this context, he also relied upon the judgment of this Court in *Rajendra Kumar Mohta v. Abhijit Das Gupta & Ors.* reported in

1999 SCC Online Cal 368 and another unreported judgment of this Court passed in CRA 118 of 2019 wherein this Court held while disposing an appeal observed that non-compliance of Section 42 of the NDPS Act vitiated the trial and the appellants were accordingly acquitted.

Mr. Sengupta and Md. Adil Badr, learned counsel appearing on behalf of the State in the respective cases, opposed to the bail prayer contending that there was compliance of both Sections 42(1) as well as Section 42(2) of the NDPS Act. They further contended that in the instant case superior was a part of raiding team and, as such, it would not come to the aid of petitioners' bail application. He further submits that whether there was any non-compliance of Section 42 or not and for which, whether search and seizure made by the investigating authority will be vitiated or not, will be decided at the time of trial and the prosecution is yet to examine twelve more witnesses. He further submits that in compliance of Section 42(2) of the NDPS Act, the report was given to the superior within 72 hours, which is reflected in the evidence of PW 1. In this context, Md. Adil Badr relied upon the judgment of the Apex Court in Karnail Singh v. State of Haryana reported in (2009) 8 SCC 539 and contended that the provision laid down in Section 42 should not be misused by the wrongdoers as a major

ground either for acquittal or for granting bail and as held by the Apex Court, this provision should be taken as discretionary measure, which should check the misuse of the Act rather than providing an escape of the hardened drug-peddlers.

Having considered the submissions made on behalf of both the parties, it appears that the prosecution is still required to examine twelve more witnesses and it is too early to come to a conclusion on the basis of the evidence of PW 1 that entire search and seizure in connection with the present proceeding is liable to be vitiated or that there was total non-compliance of Section 42 of the Act. Since, the material placed before me discloses that there are, *prima facie*, reasons to believe that the accused person is guilty of committing the alleged offence, I find that the restrictions imposed under Section 37 of the NDPS Act clearly attracts in respect of the present two petitioners in both the cases and, as such, the prayer for bail made by them are rejected.

However, the Trial court is requested to expedite the trial and to conclude the same within a reasonable period of time keeping it in mind that the fundamental right of speedy trial of the accused persons is guaranteed under Article 21 of the Constitution of India.

Accordingly, CRM (NDPS) 511 of 2025 and CRM (NDPS) 655 of 2025 are disposed of.

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.)