

4.9.2025
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Allowed

C.R.M. (NDPS) 821 of 2025

In Re:- An application for Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed in connection with NDPS case no. 111 of 2024 arising out of Lalgola Police Station case no. 1016 of 2024 dated 10.10.2024 under Sections 21(C)/29 of the NDPS Act, 1985.

And

In the matter of : **Nazmul Hudqa @ Md. Najmul Huda**
@ Nazmul Huda

.... Petitioner

Mr. Arnab Chatterjee
Mr. Chandan Mondal

...for the Petitioner

Mr. Suman De
Ms. Puja Goswami

...for the State

Prosecution case is that 100 bottles of cough syrup containing codeine phosphate was recovered from the possession of the present petitioner.

Learned counsel for the petitioner submits that the sample of the seized alamat was sent for chemical examination on 29.3.2025 and the report received from the CFSL discloses that the substance contains chlorphenamine which is not covered under the NDPS Act. Thereafter, the prayer was made before the Trial court on 3rd April, 2025 for re-examination of the same sample and when it was tested by the State Drug Control Research Laboratory, it was detected that the substance contained codeine phosphate which comes under the purview of the NDPS Act, 1985.

Relying upon the judgment of **Thana Singh Vs. Central Bureau of Narcotics** reported in **(2013) 2 SCC 590**, he contended that in paragraph 27, the Apex court has made it

clear that such application can only be made in rare cases within 15 days of the receipt of the test report and in the absence of any compelling circumstances, any form of re-testing or re-sampling is strictly prohibited under the NDPS Act. He also relied upon a judgment of this court passed in **CRM 5156 of 2014 (Chhobirul Sk. Vs. State of West Bengal)** and another judgment of this court passed in **CRM (NDPS) 175 of 2023 (Abdus Salam Mondal Vs. State of West Bengal)**.

In such view of the matter, learned counsel for the petitioner submits that since there exists two contradictory chemical examination reports in the record, it raises reason to disbelieve that the petitioner has committed any offence under the NDPS Act and as such, he is entitled to be released on bail.

He further submits that the charge has been framed on 19.8.2025 and the prosecution proposes to examine 14 witnesses and nobody knows when the trial would be concluded and considering period of incarceration suffered by the petitioner, he may be released on bail on any terms and conditions.

Learned counsel for the State opposed the bail prayer contending that the prosecution relies upon the latter report which discloses that the seized substance contains codeine phosphate and commercial quantity of narcotic substance was recovered from the possession of the present petitioner and as such, the rigour of Section 37 of the NDPS Act clearly

attracts in respect of the present petitioner and that trial has already commenced and it will not take much time to conclude the trial. He further submits that the order by which the Trial court allowed the prayer of the State to re-examination of sample has not been challenged by the petitioner and as such, he cannot take that plea at this stage of bail hearing.

I have considered the submission made by both the parties. In the present case, the sample which initially was sent to the CFSL, they submitted a report that adopting TLC, FT-IR and GCMS technique they came to a finding that the substance contains chlorphenamine which is not covered under the NDPS Act but subsequently, when it was sent to the said CFL they adopted HPLC method and came to a finding that the substance contains codeine phosphate.

In the case of **Abdus Salam Mondal** (supra) this High Court in a similar circumstance held that

“in the present case, the initial sample has been subjected to chemical analysis under TLC, FT-IR and GCMS technique. Subsequent sample was tested under the same GCMS technique which revealed a contrary view. Though the aforesaid circumstances may not be sufficient to reject the subsequent report from the basket of evidence during trial, the inconsistent opinions of the experts who had conducted tests through the same technique on the samples give rise to sufficient ground to rebut the statutory restrictions under Section 37 of the NDPS Act. Under such circumstances, we are inclined to grant bail to the petitioner.”

In the other judgment of **Chhobirul Sk.** (supra), this High Court held in such circumstance that

“having considered the case diary and the materials on record, and, particularly, when the charge-sheet has been submitted and the petitioner is in custody for 100 days and , also, there is discrepancy in the chemical examination report contained in the seizure list, we are of the opinion that further detention of the accused/petitioner is not necessary.”

It is true that in the present case, two test reports were given adopting two different methods. However, the fact remains that the charge-sheet has already been submitted and the petitioner is in custody for about one year and there is discrepancy in the chemical examination report, and furthermore, the examination of witnesses has not yet been started and the prosecution proposes to examine 14 witnesses and as such there is hardly any chance of early conclusion of trial and considering all these, the prayer for bail made by the petitioner is allowed.

Accordingly, the petitioner namely, **Nazmul Hudqa @ Md. Najmul Huda @ Nazmul Huda** shall be released on bail upon furnishing a bond of Rs. 20,000/- with two registered sureties of Rs. 10000/- each, of which one must be local, subject to the satisfaction of the learned Chief Judicial Magistrate, Berhampore at Murshidabad and also on condition that the accused person shall not mis-use the liberty granted by this Court and he shall not tamper with any evidence orally or documentary during the trial. He shall not

absent himself on any day during trial and shall not commit any offence while on bail. He shall give his mobile phone number to the local police station and shall not change it without prior permission of the trial court and he shall not in any manner try to delay the trial. The petitioner shall not leave the geographical limit of district of Murshidabad without taking leave from the court below and shall report to the O.C./I.C., Lalgola Police Station once in a week until further order. The court below will be at liberty to cancel the bail in the event of violation of any of the conditions without making any reference to this court.

Be it mentioned, that anything said herein shall not be construed as an expression of opinion on the merit of the case.

Accordingly, CRM (NDPS) 821 of 2025 is disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)