

04.12.2025

Sl. No. ML452
Court No. 35

REJECTED

Asraf, A.R.(Ct.)

In the High Court at Calcutta
Criminal Miscellaneous Jurisdiction
Appellate Side

Case No.

CRM (NDPS) 895 of 2025

In Re : An application for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Kaliachawk Police Station case no. 1476 of 2024 dated 17.09.2024 under Sections 21(c), 25, 27A and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985.

-AND-

In the matter of :

AMINUR HOQUE

.....Petitioner

For the Petitioner :

Mr. Achin Jana
Mr. Prosenjit Ghosh
Mr. Akash Ghosh

...Advocates

For the State :

Mr. Subhamoy Bhattacharya
Mr. Sobhan Gani

...Advocates

1. Learned advocate appearing on behalf of the petitioner submits that the petitioner was arrested on 17.09.2024 and the subject matter of the case is recovery of 355 gms of brown sugar from the house of the co-accused. The petitioner at the relevant point of time was present in the house and he has been implicated in the connection with the instant case. It has also been submitted by the learned advocate for the petitioner that the seizure was from the bedroom of the co-accused and the petitioner along with others was present. As such, they have been arrested.

2. In order to fortify his argument, learned advocate relies upon the order of the Division Bench passed in CRM 3843 of 2021 wherein it was held that some persons in the house at the time of seizure do not suggest complicity of the accused and, as such, in the said case bail was granted.
3. Learned advocate for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court passed in the case of Ram Singh vs. Central Bureau of Narcotics reported in (2011) 11 SCC 347 wherein the Hon'ble Apex Court was pleased to hold the following in paragraphs 24 and 25 :-

"...24. It is trite that to hold a person guilty, possession has to be conscious. Control over the goods is one of the tests to ascertain conscious possession so also the title. Once an article is found in possession of an accused it could be presumed that he was in conscious possession. Possession is a polymorphous term which carries different meaning in different context and circumstances and, therefore, it is difficult to lay down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes. A servant of a hotel, in our opinion, cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control.

25. Applying the aforesaid principle when we consider the facts of the present case it is difficult to hold that opium was in possession of the appellant. There is no evidence on record to suggest that the appellant was in occupation of the room from where opium was recovered. Further the evidence clearly points out that title

to the opium vested in the owners of the hotel. The confession given by the appellant was only that he was servant of the owners of the hotel from where the opium was recovered. In the face of the state of evidence it is difficult to hold that the appellant was in conscious possession of the opium. Section 18 of the Act prescribes punishment for possession and that possession, in our opinion, has to be conscious. In the facts of the present case it is difficult to hold that the appellant was in possession of the opium and, therefore, his conviction and sentence cannot be sustained."

4. Learned advocate appearing for the State submits that the prosecution case is that all the accused persons were conspiring for dealing of commercial quantity of 355 gms of brown sugar which were recovered from the house of one of the co-accused. The charges for which the chargesheet has been submitted are under Sections 21(c), 25, 27A and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985. The element of conspiracy is on the face of it available from the statement of the witnesses as also the issue relating to financing is concerned.
5. I have taken into account the submission of the learned advocates appearing for the petitioner as also the State and the judgments relied upon by the petitioner.
6. So far as the Division Bench of the Calcutta High Court is concerned in CRM 3843 of 2021 in the said case, the Court was pleased to grant bail on the issue that no narcotic substance was recovered from the personal possession of the accused concerned, however, there was no case made

out that a conspiracy was hatched up for dealing with brown sugar which is the factual foundation of the present case. So far as the judgment of the Hon'ble Supreme Court passed in Ram Singh (supra) is concerned, the same is against an order of conviction in an appeal.

7. Having considered the stage of the case and the approach of the petitioner, I am of the opinion that Section 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 is attracted in the instant case. Consequently, the rigors of Section 37 of the Narcotics Drugs and Psychotropic Substances Act, 1985 is also attracted.
8. Accordingly, the prayer for bail of the petitioner is rejected.
9. As such, **CRM(NDPS) 895 of 2025 is dismissed.**
10. All parties shall act on the basis of server copy of this order duly downloaded from the official website of this Court.
11. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Tirthankar Ghosh, J.)