

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**CRM (NDPS) 1458 of 2024
Antarul Sk.**

Vs.

**The State of West Bengal
with**

**CRM (NDPS) 1539 of 2024
Kasem Sk. & Anr.**

Vs.

The state of West Bengal

For the Petitioner : Mr. Mr. Soumyajit Das Mahapatra,
Mr. Antarul Hoque Molla, Advocates

For the State in : Mr. Debasish Roy, Learned PP
CRM (NDPS) 1458 of 2024 Mr. Iqbal Kabir,
Ms. Srilekha Chatterjee, Advocates

For the State : *Mr. Sujan Chatterjee, Advocate*
in CRM (NDPS) 1539 of 2024

Heard on & Judgment : February 24, 2025

DEBANGSU BASAK, J.

1. Petitioner in CRM (NDPS) 1458 of 2024 prays for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No. 15/2024 arising out of Palashipara Police Station Case No. 70 of 2024 dated 08.02.2024 under Sections 21(c)/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and petitioners in

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CRM (NDPS) 1539 of 2024 pray for bail under Section 439 of the Code of Criminal Procedure corresponding in connection with NDPS Case No. 16/2024 arising out of Kaliganj Police Station Case No. 139 of 2024 dated 11.02.2024 under Sections 18(b) of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Learned advocate appearing for the petitioners draws the attention of the Court to a notice purporting to be under Section 50 of the NDPS Act, 1985 and submits that, such notice, claim that a particular official will be undertaking the search and seizure and that same other person did so. He submits that there is no valid notice under Section 50 of the NDPS Act, 1985 as against his clients.
3. Learned advocate appearing for the petitioners relies upon **(2018) 9 SCC 708 [SK. Raju alias Abdul Haque alias Jagga vs. State of West Bengal]** and submits that, non-compliance of Section 50 was fatal to the case of the prosecution.
4. Learned Public Prosecutor submits that commercial quantity of narcotic was recovered from a plastic bag which the petitioners were carrying. He submits that compliance of Section 50 of the Act of 1985 is not required assuming though not admitting that the notice under Section 50 of the Act of 1985 was incorrect. He relies upon a decision of the Supreme Court dated **August 20, 2024** rendered in **Criminal Appeal No. 3434 of 2024 [State of Kerala vs. Prabhu]** in support of his contention.
5. Police seized commercial quantity of narcotic.

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6. Materials on record suggest that such recovery was made from a plastic bag which the petitioners were carrying.
7. There is a writing dated February 7, 2024 issued by the police to the petitioners before us.
8. As noted above, narcotic was seized from a bag which was carried by the petitioners.
9. Both **Sk. Raju (supra)** and **Prabhu (supra)** were rendered by the Hon'ble Supreme Court on appeals against judgments of conviction and acquittal, respectively. Both were rendered on the conclusion of trial. We are at the stage of consideration of a prayer for grant of bail pending trial.
10. **Sk. Raju (supra)** is of the view that when contraband is recovered from the bag carried by the accused compliance with Section 50 of the NDPS Act, 1985 was not mandatory. In the facts of that case, the affirmation of the conviction order was upheld by the Hon'ble Supreme Court.
11. In **Prabhu (supra)** recovery of commercial quantity of narcotic was made from a bag in the possession of the accused. On the issue of compliance with Section 50 of the Act of 1985, it held as follows :-
 - "7. Thus, it is evident that the exposition of law on the question regarding the requirement of compliance with Section 50 of the NDPS Act is no more res integra and this Court in unambiguous term held that if the recovery was not from the person and whereas from a bag carried

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by him, the procedure formalities prescribed under Section 50 of the NDPS Act was not required to be complied with. It is to be noted that in the case on hand also the evidence indisputably established that the recovery of the contraband was from the bag which was being carried by the respondent.”

12. Both **Sk. Raju (supra)** and **Prabhu (supra)** noted the previous authorities on the subject, such as **(1999) 6 SCC 172 (State of Punjab vs. Baldev Singh)** and **(2005) 4 SCC 350 (State of H.P. vs. Pawan Kumar)**.
13. Without the trial being completed in this case it would be presumptuous to conclude that Section 50 of the Act of 1985 stood attracted or was violated, if it stood attracted.
14. In such circumstances, petitioners are unable to overcome the restrictions under Section 37 of the NDPS Act, 1985.
15. Consequently, we are not inclined to grant bail to the petitioners.
16. Prayer for bail of the petitioners is **rejected**.
17. CRM (NDPS) 1458 of 2024 and CRM (NDPS) 1539 of 2024 are **dismissed**.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)