

25.02.2025

DL-56

Court No.26

CRM (NDPS) 1995 of 2024

*(Bail **Rejected**)*

(AD)

In re : An Application for Bail under Section 439 of the Code of Criminal Procedure, 1973/ under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with NDPS Case No.01 of 2023 arising out of **Purulia (M)** Police Station Case No.**261** of **2022** dated **31.12.2022** under Sections **21(C)/29** of Narcotic Drugs and Psychotropic Substances Act, 1985.

-And-

In the matter of : Sk. Kismat @ Gobbar

... ...Petitioner

Mr. Ayan Basu, Advocate

Sk. Salim, Advocate

... ... For the Petitioner

Ms. Subhasree Patel, Advocate

Mr. Asif Dewan, Advocate

... ...For the State

1. Report as called by the Coordinate Bench filed in Court be taken on record.
2. Petitioner prays for bail.
3. Learned Advocate appearing for the petitioner submits that, the renewal prayer is made on the ground of delay of trial and on the ground of doubtful sampling. He relies upon **2023 INSC 912 (Yusuf @ Asif vs. State)** in support of the proposition that, when the sampling is doubtful, the accused is to be acquitted.
4. Learned Advocate appearing for the State submits that, the trial is in progress. The next schedule of recording the

evidence of the prosecution is fixed on and from February 24, 2025. She submits that, only three prosecution witnesses out of 13 prosecution witnesses stand examined. She draws the attention of the Court to the fact that, commercial quantity of contraband was recovered on the leading statement made by the petitioner, *albeit* in custody in another police case.

5. The petitioner is in custody for a period slightly in excess of two years one month. Trial is in progress. Out of 13 prosecution witnesses, three were examined. Schedule of recording evidence of the prosecution stands fixed by the trial court. Commercial quantity of contraband was recovered on the leading statement made by the petitioner, albeit in custody.
6. ***Yusuf @ Asif*** (*supra*) was rendered in a situation where the trial was completed. The issue as to whether, the sampling is doubtful or not needs to be decided at the trial, if so raised. Trial is yet to be concluded. It would be presumptuous on our part to arrive at a finding that there is any infraction so far as sampling is concerned without the trial being concluded.
7. In such circumstances, we are of the view that the petitioner is unable to overcome the restrictions under Section 37 of the NDPS Act, 1985.
8. The period of detention coupled with the progress of the trial does not permit us to return a finding that the petitioner is entitled to bail under Article 21 of the Constitution of India.

9. In such circumstances, we are not inclined to grant bail to the petitioner.
10. Accordingly, the prayer for bail of the petitioner is **rejected**.
11. **CRM (NDPS) 1995 of 2024** is **dismissed**.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)