

1203
2025

WEDNESDAY

COURT : 01
ITEM : 15
MATTER : 439
STATUS : ALLOWED
BENCH ID : 1482
AR COURT : NANDY

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (NDPS) 24 of 2025

In Re:- An application for **Bail** under section **483** of the Bharatiya Nagarik Suraksha Sanhita filed on February 6, 2025 in connection with Jaigaon Police Station Case No. 92 of 2024 dated 10.05.2024 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act.

And

In the matter of: **PEMBA SHERPA @ HADDI**

.....PETITIONER

MR. SOURAV GANGULY, ADVOCATE
MS. RISHITA CHAKRABORTY, ADVOCATE
MR. GOPAL ROY, ADVOCATE
MR. BIBHAS KUMAR NANDI, ADVOCATE

.....for the Petitioner

MR. UJJWAL LUKSOM, ADVOCATE
MR. CHATTU ROY, ADVOCATE

.....for the State

1. This is the third application for bail, filed at the behest of the petitioner after being arrested in connection with Jaigaon Police Station Case No. 92 of 2024 dated 10.05.2024 under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act.
2. The first application for bail being CRM (NDPS) 359 of 2024 was rejected 29.07.2024 on the premise that the petitioner has not been able to make out a case for taking exception to Section 37 of the NDPS Act. A plea was raised by the petitioner that though the recovery was shown from the house of the petitioner but the seizure list does not indicate from which part of the house, it was recovered. The Court found the same point to be technical in nature and in view of the quantity mentioned in the seizure list, proceeded to dismiss the application treating the same as commercial quantity.
3. The second application for bail being CRM (NDPS) 456 of 2024 was rejected on 08.11.2024 solely on the ground that the

moment the seizure of the contraband exceeds the commercial quantity given in the schedule/list appended to the NDPS Act, unless an exception indicated therein is made out, the petitioner should not be enlarged on bail.

4. Both the aforesaid applications for bail were rejected treating the recovery of contraband above the commercial quantity and because of the embargo having created under Section 37 of the NDPS Act, the petitioner was denied bail.
5. The instant application is taken out after the charge-sheet is submitted. It is pointed out by the petitioner in the instant application that the seizure list prepared at the relevant time includes three different bottles allegedly contained contraband but the forensic laboratory test report does not indicate that one of such item contained any contraband.
6. Our attention is drawn to the charge-sheet wherein three samples marked exhibit A1, B1 and C1 were sent for forensic analysis in order to find out whether it contains any contraband prohibited in the said Act. The report reveals that only exhibit A1 and B1 contained contraband but exhibit C1 could not be analyzed as it was not listed. It is thus apparent that the third sample (exhibit C1) was excluded from the purview of analysis and it would lead to a presupposition that it does not contain any contraband.
7. Taking into account, the said forensic report, the quantity shown in the seizure list, falls below the commercial quantity indicated in the list appended to the said Act. It is thus an intermediate quantity which is presumably revealed from the possession of the petitioner and, therefore, the rigor of Section 37 of the said Act is not attracted.
8. It is within the discretion of the Court to grant bail or not depending upon the other surrounding circumstances, even in a case of an intermediate quantity of contraband

recovered. from the petitioner. We invited the Counsel for the State whether there is any antecedent of the petitioner in commission of a similar offence to which it was submitted that the record does not reveal any such antecedent to the petitioner.

9. The petitioner is already in custody for more than 300 days and charge-sheet has already been submitted and, therefore, there is no justification in keeping the petitioner in custody.
10. Accordingly, the prayer for bail is allowed.
11. The petitioner namely, **Pemba Sherpa @ Haddi**, shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Special Judge under the NDPS Act, Alipurduar, on condition that the petitioner shall attend the Court on each and every date of listing, in absence whereof for a single day without the leave obtained from the concerned Court, may disentitle the petitioner from the liberty of bail extended to him. It goes without saying that the petitioner shall cooperate in the trial and shall not intimidate the witnesses nor create any influence upon them.
12. The application being **CRM (NDPS) 24 of 2025** is accordingly **disposed of.**

(HARISH TANDON, J)

(APURBA SINHA RAY, J)