

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

24.04.2025
(ct. no.03)
09
BR

CRM (NDPS) 45 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

And

In the matter of : Lalita Roy

.... Petitioner.

Ms. Mousumi Das

... For the Petitioner

Mr. Kallol Acharjee

Mr. Kallol Nag

... for the State.

1. The prayer for bail in this case arises out of an order dated 13th December, 2024 passed by the learned Judge, Special Court, (under NDPS Act, 1985), Darjeeling in connection with C.R.(NDPS) Case no. 36 of 2024, rejecting the prayer for bail of the petitioner.
2. It is the case of the petitioner that she is **in custody for about 334 days**, even though **charge sheet was filed without FSL report** within the statutory period. Subsequently supplementary charge sheet with FSL report was filed.
3. The State has placed the case diary. It appears from the seizure list that 19n bottles of Eskuf cough syrup of 100

ml. was recovered along with 52 gms. of brown sugar which is below commercial quantity.

4. Learned counsel for the petitioner has relied upon the judgment in **Asidul Sk. @ Kalu Sk. Vs State** passed by a Division Bench of this Court **on 8.11.2023 in CRM (NDPS) 1806 of 2023** and the judgment of the Larger Bench of Calcutta High Court passed in **Subhas Yadav – vs-State of West Bengal and others, reported in 2023 SCC Online Cal 313, (Para 30)**.
5. Relying upon the judgments of the larger Bench of Calcutta High Court passed in **Subhas Yadav versus State of West Bengal and others reported in 2023 SCC Online Calcutta 2012** this Court finds that though charge sheet in this case has been filed prior to expiry of the statutory period, the same was without FSL report.
6. It also appears that the learned Public Prosecutor has also not made out any case as envisaged in Para 30(5) & (6) of **Subhas Yadav (supra)**.
7. In **Idul Miah Versus State reported in 2024 SCC Online Cal 9109**, a Co-ordinate Bench of this Court held as follows:-

“In view of the undisputed fact that in the present case the charge sheet, although filed within the period for 180 days, was not accompanied by the FSL report, and that the FSL report was filed as part

of a supplementary charge sheet filed beyond 180 days from the date of arrest of the petitioner and after he applied for statutory bail, we have to hold that upon expiry of 180 days, the petitioner became entitled to statutory bail/default bail, and the learned trial Court erred in not extending that privilege to the petitioner.”

- 8.** It is further submitted by the learned counsel for the petitioner that the mandatory provision of Section 52(1) of the NDPS Act has also not been complied with in respect of the petitioner herein (Lalita Roy).
- 9.** It appears from the memo of arrest at page 35 of the case diary in respect of the said petitioner herein, namely, Lalita Roy that column-1(e) has been left blank. It appears that while arresting the present petitioner (a woman accused) the arresting officer has not filled the said column which is a mandatory requirement in such cases. A signature of a witness has been noted in the memo of arrest but no relative or friend of the accused has been informed.
- 10.** It further appears that the mandatory provision of Section 52(1) of NDPS Act has also not been complied with, thus leading to violation of Section 22(1) of the Constitution of India.

11. It is unfortunate that the arresting officer is unaware of the mandatory requirements in case of arrests in such cases. It is mandatory that all the columns of the memo of arrest is to be filled up and if the same is not done, the arrest is not in accordance with law and also in violation of mandatory provisions of law, which is against the principles of nature justice and thus an abuse of process of law.
12. This Court in the matter of ***Jafar Ali vs State passed in CRM (NDPS) 260 of 2023 vide order dated 12.4.2023*** had passed specific directions for compliance of such mandatory directions (filling up all columns in the memo of arrest).
13. The judgment was also circulated to all the concerned superior officers in the police force for strict compliance. But this is one of the rare cases wherein it appears that the direction of the Court has been violated. As such the matter be brought to the notice of the Superintendent of Police, Darjeeling who shall conduct an enquiry into the matter and take necessary action against the arresting officer in accordance with law including the case diary.
14. Accordingly, relying upon the judgments of the Hon'ble Supreme Court in ***Pankaj Bansal vs. Union of India & Ors. reported in 2024 (7) SCC 576, (Paragraphs 21,22,27,35,37,38,39,40), Vihaan Kumar vs. State of***

Haryana & Anr. reported in 2025 SCC OnLine SC 269, (paragraphs 21, 31 and 33) and the order of a Coordinate Bench passed in **Ramkrishna vs. State of West Bengal in CRM (NDPS) 144 of 2025, (paragraphs 10 and 11)**, and in view of the decision of the Calcutta High Court in **Idul Miah (supra)** and the guidelines of the Calcutta High Court (larger Bench) laid down in **Subhas Yadav (supra)**, the petitioner **Lalita Roy** be released on bail upon furnishing bond of Rs. 20,000/- with two sureties of like amount, **one of whom must be local** to the satisfaction of the learned Judge, Special Court, NDPS Act, Darjeeling subject to the condition that the petitioner shall appear before the learned Trial Court on each and every date of hearing **unless exempted** and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and on further condition that the petitioner, while on bail, shall not to leave the jurisdiction of District Darjeeling.

15. In the event the petitioner fails to adhere to any of the conditions stipulated above without any justifiable cause, the learned trial Court shall be at liberty to proceed in accordance with law, without further reference to this Court.
16. **The application for bail being CRM (NDPS) 45 of 2025 is accordingly disposed of.**

- 17.** All connected Application stand disposed of.
- 18.** Interim order if any stands vacated.
- 19.** Copy of this Order be sent to the learned Trial Court for necessary compliance.
- 20.** Urgent certified website copy of this Order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul, J.))