

11.09.2025
Sl. no. 25
Ct. No. 3
P.M.
(Allowed)

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

C.R.M. (NDPS) 98 OF 2025

In Re: An application for post arrest bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Directorate of Revenue Intelligence Siliguri Regional Unit Seizure Case No. 01/CL/NDPS/DRI/SLG /2023-24 under Sections 20(b)(2)(c) and Section 29 of the of the NDPS Act, 1985 corresponding to C.R. (NDPS) Case No. 10 of 2024.

- And-

In the matter of: Shiva Patel

...Petitioner

Mr. Manas Kumar Mishra, Sr. Adv,
Mr. Anjul Dwivedi,
Mr. Somraj Paul
...for the Petitioner

Mr. Ratan Banik
... for DRI/Respondent Bank

1. Learned senior counsel for the petitioner submits that petitioner is in custody for the last more than 500 days. Learned counsel submits that petitioner was merely a driver and he was not in the conscious possession of the contraband recovered from the vehicle No. UP-65HT-4633. Learned senior counsel submits that articles were booked from Varanasi to be transported to Guwahati and while the truck was passing through State of West Bengal it was intercepted and recovery was effected.

2. Learned senior counsel submits that admittedly the recovery was effected at DRI office and not from the spot where the truck was intercepted. Learned counsel submits that therefore, it is material irregularity. Reliance has been placed upon **Md. Riyajuddin** – vs – **the State 2023** SCC Online Cal 6583.
3. Learned counsel for the DRI has vehemently opposed the bail application. Learned counsel submits that petitioner was found in possession of commercial quantity of ganja i.e. ganja.
4. Learned counsel submits that there is a bar under Section 37 of the NDPS Act for grant of bail. Learned counsel has further submitted that the petitioner was found in conscious possession. It has further been submitted that merely because recovery was effected at DRI Office cannot entitle to petitioner to bail.
5. Reliance has been placed on judgement of Madhya Pradesh High Court in **Kamruddin** vs **Union of India** Misc. Criminal Case no. 35531 of 2021. Learned counsel submits that as per CD recovery was effected in the presence of the petitioner.
6. The court has considered the submissions.

7. It has repeatedly been held by the constitutional court that bar under Section 37 of the NDPS Act is not absolute.
8. It is pertinent to mention that the Apex Court has repeatedly held that right to speedy trial of Article 21 can override the stringent bail condition as prescribed under Section 37 of the NDPS Act. It is the settled proposition that detention during the trial cannot be resorted to as a punitive measure. In **Md. Muslim @ Hossain** Vs. **State NCT of Delhi** Special Leave Petition (Criminal) No. 915 of 2023 reported 2023 SCC Online SC 352. It was inter alia held that extended incarceration amounts to punishment without trial. The settled proposition which bears out of the judgement of the constitutional court is that stringent rigour of Section 37 had to be meticulously applied against the backdrop of the accused fundamental right to the speedy trial. The Court is however, required to ensure that delay should not be attributed to the accused.
9. The constitutional Courts have repeatedly held that prolonged incarceration without any progress in investigation or trial be taken into account at the stage of bail. In the present case the petitioner is in custody for 500 days. Even the charges have not been framed.

There is no possibility of the trial being completed very soon. There is nothing on the record to suggest that delay can be attributed to the petitioner.

10. Thus taking into account the facts and circumstances of this case petitioner is admitted to bail upon furnishing a personal Bond of Rs. 10,000/- with two sureties, of which one must be local, to the satisfaction of the learned ACJM, Siliguri/ Ld. Trial Court,` subject to the condition that the petitioner shall attend the trial regularly, learned Trial Court while accepting the bond shall ensure the petitioner shall remain available on the address given in the bail bond and the petitioner shall also mark his appearance on every third Friday of the month before the Investigating Officer and shall attend the trial regularly before the trial court and subject to the condition that the accused shall not commit any other offence of similar nature and subject to the conditions as laid down under Section 439 of the Code of Criminal Procedure corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita and on further condition not to threaten or intimidate witnesses and to attend the jurisdictional Court on dates fixed.
11. Accordingly, **C.R.M. (NDPS) 98 of 2025** stands **disposed of.**

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dinesh Kumar Sharma, J.)