

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

25.04.2025
(ct. no.03)
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BR

CRM (NDPS) 151 of 2025

In Re : An application for bail under Section 439 of the Code of Criminal Procedure/ under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

And

In the matter of : Rohit Patel @ Rohit

.... Petitioner.

Mr. Pinaki Ghosh

... For the Petitioner

Mr. Ujjwal Luksom
Mr. Chattu Roy

... for the State.

1. The prayer for bail in this case arises out of an order dated 20.07.2024 passed by the learned Judge Additional Sessions Judge, 1st Court (under NDPS Act) at Jalpaiguri in connection with NDPS Case No. -38 of 2024 (38) arising out of New Jalpaiguri Police Station Case No. 614 of 2024, dated 24.6.2024, for alleged offence punishable under Section 21 (c)/25/29 of the NDPS Act.
2. Learned counsel for the petitioner submits that the petitioner herein was the **driver of the vehicle from which the contraband articles was recovered**. It appears from the written complaint that admittedly the petitioner herein was a driver of the said truck carrying the said articles. The contraband articles were then seized from the possession of the driver (petitioner) and the Khalasi.
3. The seizure list shows that 36000 bottles of PHENSEDYL and the ESKUF syrup was recovered from the said truck. The said

seizure was made in the presence of the driver (petitioner) and the Khalasi and as such they were made aware on the ground of arrest in the present case and thus the benefit as claimed is not available to the accused/petitioner herein. Charge sheet has been filed within the statutory period along with the chemical examination report.

4. In view of the said facts this Court finds that there has been compliance of the provision of Section 52 (1) of the NDPS Act and as such there has been no violation of Article 22(1) of the Constitution of India.
5. The petitioner herein has stated that he was not aware of what was being carried in the truck. He was only driving the vehicle for his livelihood without any knowledge of the goods being carried in the vehicle.
6. As such there was no 'conscious' possession of the article seized on his part.
7. In ***Rakesh Kumar Raghuwanshi vs The State of Madhya Pradesh, in Criminal Appeal No. 1953 of 2014, decided on January 16, 2025***, the Supreme Court held:-

“21. Conscious possession refers to a scenario where an individual not only physically possesses a narcotic drug or psychotropic substance but is also aware of its presence and nature. In other words, it requires both physical control and mental awareness. This concept has evolved primarily through judicial interpretation since the term “conscious possession” is not explicitly defined in the NDPS Act. This Court through various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his control and had the intent or knowledge of its illegal nature.”

8. In the present case admittedly the petitioner is the driver and was driving the truck carrying the goods. He was not the person who had purchased the same or was selling the same.
9. He was a driver prima facie working for his livelihood.
10. Accordingly, relying on **Rakesh Kumar (Supra)**, the petitioner herein namely, Rohit Patel @ Rohit, is entitled to bail.
11. The petitioner namely **Rohit Patel @ Rohit** be released on bail upon furnishing bond of Rs.20,000/- each with two registered sureties of Rs.10,000/- **one of which must be local** to the satisfaction of the learned Additional Sessions Judge, 1st Court (NDPS), Jalpaiguri, on further condition that they shall attend court on each and every date fixed during trial unless exempted and shall not tamper with any evidence and threaten any witness during pendency of the trial.
12. **The petitioner shall not leave the jurisdiction of District Jalpaiguri without prior permission of the learned trial Court until further orders.**
13. **CRM (NDPS) 151 of 2025** stands disposed of.
14. All connected application stand disposed of.
15. Interim order, if any, stands vacated.
16. Copy of this order be sent to the learned Trial Court for necessary compliance.
17. Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)