

August 14, 2025  
Sl. No. 6  
AKG

**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI**

**CRM (NDPS) 216 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 in connection with Bagdogra Police Station Case No. 7 of 2025 dated 06.01.2025 under Sections 21(c)/23(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

Re : **Sujan Saha**

... Petitioner

Mr. Arunava Paul

...for the Petitioner

Mr. Saikat Chatterjee,  
Mr. Chattu Roy

...for the State

The petitioner has been in custody for approximately eight months.

The State alleges that 281 grams of brown sugar (heroin) were recovered from the joint possession of the petitioner. Before the trial court, the matter is scheduled for framing of charge on September 22, 2025.

The present bail application is primarily pressed on the ground of alleged violation of Rule 11 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. The relevant portion of the said Rule is quoted below:

**“11.Quantity to be drawn for sampling. – (1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.”**

Learned counsel appearing for the petitioner strenuously contends that in the present case, only 3.7 grams of the seized contraband were sent to the Forensic Science Laboratory (FSL) for testing, which is in clear violation of the mandatory requirement under the aforesaid Rules. It is submitted that the prosecution was under a bounden legal obligation to send at least 5 grams of the sample for chemical analysis.

It is further argued that strict compliance with Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), along with the corresponding Rules, is mandatory, and any deviation therefrom would vitiate the prosecution's case and entitle the accused to acquittal.

On this basis, it is submitted that the petitioner is entitled to be released on bail.

In support of his submission, learned counsel for the petitioner places reliance on the following judgments:

**1. (2024) CrLJ 3897 (Sajeb Ali@ Shakeel v. State of Uttar Pradesh)**

**2. (2008) 8 SCC 557 (Hardip Singh v. State of Punjab)**

**3. Criminal Appeal No.1474 of 2025 (Surepally Srinivas v. The State of Andhra Pradesh)**

Learned counsel for the State, on the other hand, relies on a recent judgment of the Hon'ble Supreme Court in ***Bharat Aambale v. State of Chhattisgarh***, reported in **2025 SCC OnLine SC 110**. It is submitted that the said judgment clarifies that not every procedural deviation from the NDPS Act or the Rules framed thereunder is fatal to the prosecution's case.

The Court's attention has been drawn in particular to paragraphs 49 and 50 of the said judgment, which read as follows:

**"49.** However, a close reading of the aforesaid decision reveals that this onus on the prosecution will only encumber once such an issue of non-compliance arises for consideration. Although, we are in complete agreement with the aforesaid observations inasmuch as it would be for the prosecution to establish and prove compliance of Section 52A of the NDPS Act, yet at the same time, we are of the considered opinion, that mere assertion by the accused that there has been non-compliance of the said provision may not be sufficient. The initial burden will always be on the accused to lay down the foundational facts for

establishing that there has been a non-compliance of Section 52A of the NDPS Act, either by leading evidence of their own or by relying upon the evidence of the prosecution itself such as by putting direct and specific questions to the police officers and key witnesses. Such burden on the accused to establish contravention of Section 52A of the NDPS Act will only be on the mere preponderance of probabilities, whereas once the foundational facts are established that raises an issue as regards the non-compliance of Section 52A of the NDPS Act, the onus will entirely be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR (ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.

**50.** We summarize our final conclusion as under:—

- (I)** Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the mandate under Section 52A sub-section (2) of the NDPS Act.
- (II)** Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance

shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

- (III)** Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A subsection (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not.
- (IV)** The procedure prescribed by the Standing Order(s)/Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.
- (V)** Mere non-compliance of the procedure under Section 52A or the Standing Order(s)/Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.
- (VI)** If the other material on record adduced by the prosecution, oral or documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty

notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

- (VII)** Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.
- (VIII)** Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.
- (IX)** The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.
- (X)** Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either **(i)** there was substantial compliance with the mandate of Section 52A of the NDPS Act **OR (ii)** satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt.”

The legal position laid down by the Hon'ble Supreme Court is that mere technical non-compliance with statutory provisions will not ipso facto vitiate the prosecution. If there is substantial compliance with the mandate of Section 52A of the NDPS Act, or if the Court is satisfied that such deviation has not prejudiced the case against the accused, the non-compliance will not be deemed fatal.

In the present case, it is evident that the sample sent for analysis was marginally below the prescribed quantity under the 2022 Rules. Therefore, the core issue that arises for consideration is whether such a procedural lapse, by itself, renders the prosecution case unsustainable.

This Court has perused the report of the Central Forensic Science Laboratory, which unequivocally confirms that the seized sample tested positive for the contraband substance.

While there can be no doubt that the provisions of the NDPS Act and the Rules framed thereunder must be strictly adhered to, the legal test is whether any violation of such provisions materially affects the prosecution's case.

In the instant matter, this Court finds that the sample sent for testing was adequate to determine the nature of the contraband. Hence, the alleged deviation from

the 2022 Rules cannot, in the facts of this case, be held to be fatal to the prosecution.

Accordingly, **CRM (NDPS) 216 of 2025** stands rejected.

It is made clear that any observations made in this order are solely for the purpose of deciding this bail application and shall not have any bearing on the merits of the trial.

**(Kausik Chanda, J.)**