

**IN THE HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri
Appellate Side
Principal Bench**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.R.M. (NDPS) 434 of 2025

Rinku Das & Anr.

VERSUS

State of West Bengal

For the Petitioner:

Mr. P. Roy, Adv.

Mr. Naser Ali, Adv.

Mr. Rajan Raj, Adv.

Mr. Debojyoti Goswami, Adv.

For the State:

Mr. Aditi Shankar Chakraborty, Ld. APP

Mr. Ujjwal Luksom, Adv.

Dr. Arjun Chowdhury, Adv.

Last Heard on: October 09, 2025

Judgment on: October 29, 2025

Biswaroop Chowdhury,J:

This is an application under Section 483 of Bharatiya Naya Sanhita 2023 filed by the petitioners who are in custody in connection with Kotwali P.S. Case No. 77 of 2024 and now pending before Learned Additional Sessions Judge 1st Court at Jalpaiguri being NDPS case No-77 of 2024.

It is the contention of the petitioners that the petitioners are falsely implicated in the instant case. It is further contended that while the petitioners were travelling by a Toto which collided with another, the Toto carrying the petitioners fled away as soon as the incidents took place but the petitioners have not fled away. The detained Toto with two lady passengers were brought before the Kotwali police station compound Jalpaiguri where the whole search cum seizure of recovered narcotics has been made on 06/12/2024 in between 18.38 hrs to 19.45 hrs and the petitioners were also arrested there on 06/12/2024 in between 22.05 hrs to 22.12. hrs. The whole Search-cum-seizure and arrest were not made on the spot. This has vitiated the seizure and arrest procedure. It is also contended that the complainant admitted in cross examination that Section 50 of the NDPS Act has not been complied with in this case, and the complainant further admitted in the cross-examination that the procedure of search-cum-seizure was held in Kotwali P.S. compound in absence of the petitioners. It is further contended that the complainant also admitted in cross-examination by defence lawyer that no contrabands have been seized from the exclusive and conscious possession of the petitioners. It is also contended that the petitioners are in custody for a long period and as there is no chance to abscond the petitioners be released on bail. The petitioners have relied on the following, Judicial Decision.

Pankaj Bansal VS Union of India.

Reported in (2024) 7 SCC. 576.

Learned Advocate for the opposite party State of West Bengal objects the grant of bail.

Now with regard to the contention of the petitioner that provision under Section 50 of the NDPS Act 1985 was not followed while conducting search and seizure of the articles this argument cannot be sustained as it is held in different judicial pronouncements that provisions of Section 50 of the Act do not apply where the article was not being carried on the person of the accused.

With regard to the issue relating to absence of any female police personnel as a Learned Co-ordinate Bench of this Court by order dated 11-06-2025 granted liberty to the petitioners to canvass this issue before the Learned Trial Court this issue cannot be canvassed before this Court. However petitioners were also granted liberty by Order dated 11-06-2025 to renew the prayer for bail after the stage of consideration of charge is over.

Upon hearing the Learned Advocates and upon perusing the materials in the case diary it is admitted that search and seizure of the articles were not in the presence of the petitioners. In the cross-examination complainant has stated that he did not seize the contraband from the exclusive and conscious possession of the accused persons. He further stated that at the time of seizure no female police personnel were present. He also stated that at the time of arrest of the accused persons/petitioners no female officers were present and the accused persons were not communicated in writing the grounds of arrest. In the cross-examination it will appear that there was violation of some

statutory provisions regarding arrest of female accused persons. The accused persons also suffered injury, and the prosecution could not show any exceptional circumstance to arrest the petitioners in the evening, after they were treated for injury at hospital, when petitioners did not try to escape nor did they obstruct nor were they having arms and when no steps were taken to apprehend the driver of Toto for interrogation although he fled away. Upon further perusal of the complaint it appears that articles in three bags were found on the space between the passenger seat, one bag near the foot brake pedal and another bag inside the cabinet of driver's seat. As Toto is not the private vehicle of the petitioners it cannot be said that recovery of the articles is from the vehicle of the petitioners. Secondly the packets which were seized in the absence of the petitioners it cannot be said that petitioners were in conscious possession of the articles. Thirdly it appears that bags were found near the brake pedal, and inside cabinet under driver's seat. Hence when articles are recovered from the cabinet under driver's seat and from the brake pedal where Toto driver will only have right and passengers cannot have right and access; the petitioners are implicated on the ground of recovery of those bags also. Thus for all the bags found inside the Toto the petitioners are implicated without any steps being taken to apprehend the driver and interrogate him, when Toto is not private vehicle of the petitioners and can be boarded by general public.

The petitioners did not flee away from the scene, neither they were seen with fear, nor they were found of making any attempt to take away bags from

Toto while leaving the place for treatment. The petitioners are also not found to belong to same family or to same locality but are residents of two different Districts. Thus the petitioners have been able to meet the rigors of the provisions contained in Section 37(1)(b) of the NDPS Act 1985. Moreover the petitioners are in custody for more than 10 months and the trial has just started and considering the number of witnesses to be examined there is likelihood of delay. Thus in the interest of justice the petitioners should be released on bail.

Hence the petitioners be released on bail with 2 sureties of Rs. 10,000/- each one of which must be local subject to the satisfaction of the trial Court.

The petitioners upon being released shall attend Court on all dated fixed and shall not leave the jurisdiction of the Court without leave of trial Court, and shall furnish their mobile number to the officer in charge of the concerned police station where they will be residing.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)