

17.11.2025
Item No.44
Ct. No. 4
CHC
(Rejected)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

C.R.M.(NDPS) 449 of 2025

In Re:- An application under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 in connection with Sitalkuchi
Police Station Case No.5 of 2025 dated 05.01.2025 under
Section 21(c)/29 of NDPS Act, 1985.

And

In the matter of : **Rejaul Ashik**

..... petitioner

Mr. Gopal Roy, Advocate
....for the petitioner

Mr. Tapan Bhattacharjee, Advocate
Mr. Chattu Roy, Advocate
...for the State

1. Petitioner renews the prayer for bail.
2. It is submitted on behalf of the petitioner that, at the time
of first bail prayer petitioner was rejected, the case was
under investigation. At this stage, investigating has ended
in a charge-sheet.
3. Learned advocate appearing for the petitioner further
submits that, trial of the case has commenced. The
witnesses have stated in their deposition that, seizure of
contraband was made from the other accused. It is
submitted on behalf of the petitioner that, no seizure was
made from the active possession of the present petitioner.
Learned advocate for the petitioner also submits that,

there were serious violation of Section 42 of the NDPS Act at the time of making search and seizure of the contraband articles.

4. In support of such contention, learned advocate for the petitioner relied upon **(2004) 12 Supreme Court Cases 266** in the case of ***Sarija Banu alias janarthani alias janani & anr. vs. State through inspector of police.*** He relies upon paragraph-7 of the said judgment which as follows:-

“7. It is pertinent to note that in the bail application of the appellants, it was alleged, that there was serious violation of Section 42 of the NDPS Act. In the impugned order nothing is stated about the alleged violation of Section 42, and it is observed that it was not necessary to consider such violation at this stage. The compliance with Section 42 is mandatory and that is a relevant fact which should have engaged the attention of the Court while considering the bail application.”

5. Learned advocate for the petitioner also relies on several portions of the deposition of P.W.1.
6. Learned advocate for the State submitted that, although, no contraband is shown to have been recovered from the active possession of the present petitioner but at the time of making search and seizure, petitioner was present at the spot. According to learned advocate for the State that, he was a member of the team which was dealing in the contraband articles.

7. Having heard the submission made on behalf of the parties and on perusing the materials, it transpires that the huge quantity of contraband articles were recovered. Although, an attempt has been made that, since nothing was recovered from the active possession of the petitioner, the petitioner cannot be held liable for the recovery of the contraband articles. However, the materials on record go to show that that, the petitioner was very much present at the spot during search and seizure operation conducted by the State agencies.
8. From the evidence of P.W. 1 relied upon by the learned advocate for the petitioner, it transpires that, the search and seizure were made in compliance of different provisions of the NDPS including Section 42 thereof. The evidence of P.W. 1 goes to show that, petitioner was very much present at the time of search and seizure when contraband articles were recovered from the possession of the co-accused. The petitioner has not been able to explain his presence at the spot at the relevant point of time.
9. In such view of the fact, I am not in a position to come to a conclusion that, petitioner has been able to overcome the restrictions under Section 37 of the NDPS Act, 1985.
10. Prayer for bail of the petitioner is thus rejected.
11. CRM (NDPS) 449 of 2025 is disposed of.

(Md. Shabbar Rashidi, J.)