

In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction
Appellate Side

Present :
Hon'ble Justice Md. Shabbar Rashidi

CRM (NDPS) 456 of 2025

SOFIUL HAQUE alias SAPIKUL HAQUE alias CHHAPIKUL HOSSAIN
alias **SAFIDUL HUSEN**

Versus

THE STATE OF WEST BENGAL

For the Petitioner : Kalipada Das
... *Advocate*

For the State : Mr. Nilay Chakraborty, APP
Mr. Bhaskar Das
Mr. Chattu Ray
... *Advocates*

Heard on : 26.11.2025

Judgement on : 26.11.2025

Md. Shabbar Rashidi, J. :-

1. This is 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 filed in connection with Jaigaon PS case no.182 of 2024 dated 04.09.2024 under Sections

21(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and the same is taken up for consideration.

2. It is submitted by the learned advocate appearing on behalf of the petitioner that the petitioner has been in custody for over 445 days. The investigation of the case has ended in chargesheet. However, charges are yet to be framed in the case. Learned advocate for the petitioner draws the attention of this Court to an order dated November 26, 2024 passed in CRM(NDPS) 498 of 2024 where the accused was granted bail on the basis of prolonged incarceration.
3. Learned advocate for the petitioner further submits that the co-accused was granted bail by this Court vide an order dated April 29, 2024 passed in CRM(NDPS) 142 of 2025. He submits that the petitioner deserves to be enlarged on bail.
4. Learned advocate for the State relies upon the materials in the case diary including the seizure list. He submits that commercial quantity of narcotics was seized from the house belonging to the present petitioner.
5. Upon hearing the parties and on perusal of materials in the case diary, it appears that the petitioner was arrested on September 4, 2024 with commercial quantity of narcotics in the nature of 120 bottles of cough syrup (codeine phosphate). Materials on record also go to show that the co-accused was granted bail in

consideration of the fact that seizure was made from the house of the present petitioner. In that view of the matter, the petitioner cannot claim parity with the other accused person who was granted bail.

6. So far as prolonged incarceration is concerned, the following was observed by a Coordinate Bench of this Court in **CRM(NDPS) no. 498 of 2024 (Padya Singha @ Bikram vs. State of West Bengal) :-**

“...5. In the judgment of Rabi Prakash vs. State of Odisha, reported in 2023 SCC Online SC 1109, it has been specifically ruled that prolonged incarceration without any likelihood of conclusion of trial in the near future can militate against the statutory embargo engrafted under Section 37 of the NDPS Act. The petitioner’s right to liberty and speedy trial are guaranteed under Article 21 of the Constitution of India. The relevant paragraphs of the said judgment in Rabi Prakash (supra) are quoted below:-

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable

grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.””

7. In the case of **Padya Singha @ Bikram (supra)**, the incarceration was well over three years whereas in the present case it is over a year and four months. Moreover, as it transpires from the materials in the case diary that the investigation of the case has already ended in chargesheet. The report submitted by the State indicates that the case before the learned Trial Court is fixed on December 15, 2025 for consideration of charge. In such view of the matter, I am not in a position to return a definite finding that there is no likelihood of commencement of the trial in the near future.
8. In the aforesaid circumstances, taking into consideration the quantum of contraband seized from the house belonging to the present petitioner, I am not in a position to hold that the petitioner has been able to overcome the restrictions contained in Section 37 of the Narcotics Drugs and Psychotropic

Substances, 1985. Therefore, I am not inclined to enlarge the petitioner on bail.

9. Hence, the prayer for bail is **rejected**.
10. Accordingly, CRM(NPDS) 456 of 2025 stands disposed of.
11. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Md. Shabbar Rashidi, J.)

Asraf, A. R. (Court)