

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Tirthankar Ghosh

CRM (NDPS) No. 766 of 2026

***Sarita Devi
versus
The Union of India***

For the Petitioner : Mr. Sk Toslim Ali.

For the N.C.B. : Mr. Gauranga Kumar Das.
Mr. Uttam Basak

**Heard On : 27.04.2026, 28.04.2026, 07.05.2026,
15.05.2026, 19.05.2026 & 20.05.2026.**

Judgement On : 20.05.2026

Tirthankar Ghosh, J. :

The present application for bail under Section 439 of the Code of Criminal Procedure, 1973/Under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred on behalf of the petitioner in connection with NCB Crime No.12/NCB/KOL/2024 corresponding to T.R. Case No. 13 of 2024 under Sections 20(b)(ii)(c)/28/29 of the Narcotic Drugs Psychotropic Substances Act, 1985.

Learned advocate appearing for the petitioner submits that the petitioner is in custody for one year ten months and has been implicated for alleged joint recovery of 68.5 kgs of ganja. According to the petitioner, till

date only examination-in-chief of one witness is over and the prosecution intends to examine nine witnesses in support of its case. Learned advocate for the petitioner has relied upon judgment of the Hon'ble Supreme Court in Criminal Appeal No. 2159 of 2026 arising out of SLP (Crl.) No. 2331 of 2026 [Subhasis Halder & Anr. –Vs. – The State of West Bengal] as also the judgment of Rabi Prakash –Vs. – The State of Odisha, 2023 SCC OnLine SC 1109. Learned advocate emphasizes on the following observations of the Hon'ble Supreme Court in Rabi Prakash (supra).

“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.”

Reference has been made to the recent judgment of the Hon'ble Supreme Court in Syed Iftikhar Andrabi –Vs. – National Investigation Agency, Jammu [SLP (Criminal) No. 1090 of 2026]. The main ground of emphasis of the learned advocate for the petitioner is that not only the petitioner is in custody for one year ten months but also there is no possibility of the trial being concluded in near future. As such, the petitioner may be released on bail on any stringent conditions.

Learned advocate for the NCB opposes the prayer for bail and refers to the judgment of the Hon'ble Supreme Court in State of Punjab –Vs. – Sukhwinder Singh @ Gora [SLP (Crl.) No. 5020 of 2026] and referred to paragraphs 9 and 10 of the said judgment which read as follows:

“9. *It is well-settled that in matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial. The provision casts upon the Court a duty to record, before enlarging an accused on bail, its satisfaction on two cumulative conditions, first, that there exist reasonable grounds for believing that the accused is not guilty of the offence charged; and second, that he is not likely to commit any offence while on bail. The recording of such satisfaction is not a mere formality but a mandatory pre-condition, the non-observance of which vitiates the grant of bail. This Court, in Kashif (supra), has held in no uncertain terms that the recording of satisfaction on the twin conditions under Section 37 is mandatory and not merely directory, and that an order granting bail without such recorded satisfaction stands vitiated and cannot be sustained. The same view stands reiterated in Lalrintluanga Sailo (supra).*

10. *The impugned order, on its own showing, does not record the satisfaction mandated under Section 37(1)(b)(ii) of the NDPS Act. Far from recording such satisfaction, the High Court has gone on to observe that 'the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial.' Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone. The right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious Constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be*

pressed into service solely on the ground of delay to override it. The constitutional right under Article 21 and the special provision of law under Section 37, NDPS Act are to be read harmoniously and not placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has in this Court's view, committed an error."

Learned advocate for the NCB has also referred to the judgment of the Hon'ble Supreme Court in Union of India –Vs. – Vigin K. Varghese [Special Leave Petition (Crl.) No(s). 7768 of 2025] and referred to paragraph 21 which reads as follows:

"21. *In our considered view, the interests of justice would be met if the impugned orders are set aside and the matter is remitted to the High Court for fresh consideration of the respondent's prayer for bail, keeping in view the parameters of Section 37 of the NDPS Act, the nature and quantity of contraband alleged to have been seized including 50.232 kilograms of Cocaine on 06.10.2022 and 07.10.2022, the role attributed to the respondent in the said import, the allegation of his involvement in an earlier seizure of 198.1 kilograms of methamphetamine and 9.035 kilograms of cocaine in early October 2022, the period of custody undergone since October 2022, and the stage of trial before the Special Court."*

I have taken into account the submissions of the learned advocate appearing for the petitioner as well as the learned advocate appearing for the NCB. Both the advocates have relied upon relevant precedents.

So far as Sukhwinder Singh @ Gora (supra) is concerned, the Hon'ble Supreme Court have taken into consideration not only the twin conditions

imposed under Section 37 of the NDPS Act but also the accused in the said case having previous antecedents. There are no materials to show that the petitioner is a habitual offender. The progress of the trial in the present case is not inspiring and the same is one of the considerations while deciding an application for bail. Petitioner has referred to Subhasis Haldar (supra) wherein in a similarly placed circumstance, an accused was in custody for one year five months and the order of the Hon'ble High Court (while rejecting bail) reflects that the subject matter of the said case related to recovery of 78.02 kgs of cannabis. The Hon'ble Supreme Court in the said case was pleased to release the accused on bail.

Having considered that there cannot be straightjacket formula for a person to be released on bail but having considered the manner in which the trial is progressing, I am of the opinion that as the petitioner being a lady is in custody for one year ten months and some time will be taken by the prosecution to take the trial to its logical conclusion, further, the petitioner has already suffered custody for some time, I am of the view that the petitioner may be released on bail. Accordingly, the prayer for bail of the petitioner is **allowed**.

As such, petitioner namely, **Sarita Devi** shall be released on bail upon furnishing bond of Rs. 20,000/- (Rupees Twenty Thousand only), with two sureties of Rs. 10,000 (Rupees Ten Thousand only) each, one of whom must be local to the satisfaction of the learned Additional District & Sessions Judge, 3rd Court (Special Court under NDPS Act), Howrah.

If on bail, the petitioner shall be physically present on each and every date fixed by the learned Special Court and shall not leave the jurisdiction of District of Howrah without prior permission of the learned Special Court.

Additionally, it is directed that petitioner before her release will inform the address where she would be staying to the learned Special Court. The learned Special Court thereafter would pass a direction to the Officer-in-Charge of the concerned police station once in a week to check the availability of the petitioner till the learned Special Court consider it convenient to modify or waive such condition.

With the aforesaid observations CRM (NDPS) 766 of 2026 is **allowed**.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)