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22.04.2026
Ct. No.34

(rejected)
sg

CRM (NDPS) 1423 of 2025

In re: An application for bail under Section 439 of the Code of Criminal Procedure 1973/ Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 in connection with Special Case No. 723 of 2024 dated 23-03-2024 under Sections 21(c)/27A/29 of the Narcotic Drugs and Psychotropic Substances Act.

- A n d -

In the matter of : Samad Hossain

.... Petitioner.

Mr. Milon Mukherjee, sr.adv.
Mr. A. Patra
Mr. S.Ghosh

... For the Petitioner.

Mr. Antraikhya Basu

... For the State.

1. This is an application for bail under Section 439 of the Code of Criminal Procedure, 1973/Section 483 of the BNSS, 2023 filed by the present petitioner (in custody) praying for an order of bail for the second time after being refused by the Court of learned Additional District and Sessions Judge, 3rd Court Malda cum Special Court NDPS Act, Malda for connection with Special Case No. 34 of 2024.

2. Heard the submission. Learned senior advocate appearing on behalf of the petitioner raises points for consideration is that the ground of arrest was not handed over to the present petitioner which is mandatory in terms of

the decision pronounced by the Hon'ble Supreme Court and relied upon the decision of ***Dr. Rajinder Rajan Vs. Union of India & Anr.*** arising out SLP (Crl. No.(s) 3327 of 2026 and ***2026 (1) SCC 500 Mihir Rajesh Shah Vs. State of Maharashtra and Another 2015 INSC 1288.***

3. It is further submitted that other co-accused are already enlarged on bail and supplementary chargesheet has been submitted along with chemical analysis report against the petitioner. It is submitted that he is in custody for a considerable period and an innocent person and has been falsely implicated in this case.

4. It appears from the record as well as from the submission of the learned prosecution, and submits that huge quantity of heroin with extent 2.06 kg was recovered directly from the present accused person on interception on the spot. The petitioner was arrested on 23rd May, 2024 and the judgement of the Supreme Court in ***Mihir Rajesh Shah*** was delivered in the Month of November 6, 2025. In terms of the observation of the said decision such benefit cannot be availed by the present petitioner since the present arrest was prior to pronouncement of such decision. That apart chemical report initially revealed that the Diacetic morphin (heroin)- 6-N.O.A. C ETYL Morphin Morphin- ACETAC, Morphin-Codein, AC ETYL – Codeing, AC ETYL Codein (all are covered under NDPS Act were detected from the content which are exhibit mark in the report.

5. The decision relied upon by the prosecution in **Hira Singh And Another Vs. Union of India And Another** reported in (2020) 20 Supreme Court Cases 272 wherein paragraph 12.1. and 12.2 it was held as follows :

“12.1. The decision of this Court in E. Micheal Raj taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law.

12.2. In case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the narcotic drugs or psychotropic substances.”

6. The decision relied upon by the learned prosecution passed in CRM (NDPS) 335 of 2026 by the learned coordinate Bench observed that the Hon’ble Larger Bench overruled the decision of **Michel Raj** (supra) and lay down the guidelines. The

learned coordinate Bench discussed the decision of **Sentu Seikh** arising out of SLP (CRL.) No. 13987 of 2025 and observed that said observations were for limited purpose of considering an application for bail. It is specifically argued by the learned prosecution that such observation are in consonance with the NDPS Act itself.

7. So far the other co-accused they stand on a different footing and were released either statutory bail or on the ground of non-submission of FSL report when the case of the petitioner is totally different.

8. Therefore this application for bail is, thus, **rejected** in view of the decision.

9. Considering the rival submissions and going through the materials-on-record the nature of allegation which involved more than 2 kg heroin recovered directly from the spot from the possession of present petitioner, this Court is not inclined to allow the prayer of the petitioner at this stage.

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

11. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]