

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION**

Present:

The Hon'ble Justice Dinesh Kumar Sharma

C.R.M (NDPS) 28 of 2026

Md. Mustaf Ali & Anr.

Vs.

The State of West Bengal

For the petitioners: **Ms. Anjana Medhi, Adv.**

For the State: **Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Nilay Chakraborty, Ld. APP,
Mr. Abhijit Sarkar, Adv.,
Mr. Dr. Arjun Chowdhury, Adv.**

Reserved on: **24.02.2026**

Judgment on: **27.02.2026**

Dinesh Kumar Sharma, J.:

1. Present petition has been filed seeking bail in C.R. (NDPS) case no. 71 of 2025 arising out of Phansidewa Police Station Case No. 232 of 2025 dated 30.05.2025 under Section 21(c)/29 of the NDPS Act, 1985. The facts in brief are that on 30.05.2025 at 17:25 hours S.I. Sandeep Das of Bidhannagar I/C under Phansidewa Police Station, District- Darjeeling received a specific information that two persons were carrying huge narcotic contrabands substances i.e. Brown Sugar in a private car Registration No. AS01-EB-6557 from Assam, to deliver at Bidhannagar. Upon interception the search was conducted in the presence of an independent witness. The raiding team found contraband inside the ceiling of the car just about the left front seats. Three packets containing substances 823 grams, 774 grams and 781 grams

were recovered. The contrabands narcotics were seized as per procedure under Section 42 of the NDPS Act, 1985, and the seizure list was prepared in presence of witnesses. The petitioners were arrested and produced before the Learned Magistrate.

2. It is pertinent to mention here that earlier petitioner Md. Shabir Khan @ Sabir Khan had moved a bail application bearing no. C.R.M. (NDPS) 359 of 2025, which was dismissed as withdrawn on 27.10.2025. The petitioners subsequently moved separate bail application(s) bearing CRM (NDPS) 463 of 2025 and CRM (NDPS) 464 of 2025 which were dismissed vide separate detailed order(s) dated 24.11.2025 by the Learned Coordinate Bench of this Court. The petitioners again moved bail application bearing CRM (NDPS) 562 of 2025, which was dismissed by the Learned Coordinate Bench of this Court vide order dated 23.12.2025. The petitioners moved bail application before the Learned Trial Court, which was dismissed vide order 27.11.2025. The petitioners have submitted that the grounds of arrest were not mentioned in the Arrest Memo nor the same were supplied to them, which is in direct violation of Article 22 (1) of Constitution of India. The petitioner has placed reliance upon Vihaan Kumar vs. State of Haryana & Anr., (2025) 5 SCC 799.

3. The petitioner has placed reliance upon the judgment of the Gauhati High Court in Aslam Hussain vs. State of Assam BA/1498/2025, and Firoz Alom & Anr. vs. State of Assam, BA/2813/ 2025. The petitioners submit that there is a clear violation of the Article 22 (1) of the Constitution and Section 47 and 48 of the BNSS. The bail has also been sought on the ground

that daughter of Md. Sabir Khan is patient of heart disease and is in a critical condition.

4. Learned counsel for the petitioner Ms. Anjana Medhi, Advocate has argued at length and has submitted that in the present case there is a clear violation of Article 22 and the judgment of the Hon'ble Supreme Court in Vihaan Kumar (supra) and, therefore, the arrest of the petitioners itself is illegal. Learned counsel for the petitioner has placed reliance upon the judgment of the Gauhati High Court in Aslam Hussain (supra) and Firzoz Alom & Anr. (supra). The reliance has also been placed upon the judgment of Prabir Purkayastha vs. State (NCT of Delhi), (2024) 8 SCC 254. Learned counsel submits that, the earlier these judgments were not considered. Learned counsel has also submitted that, the Coordinate Bench of this Court on 23.12.2025 has simply rejected the bail application on the ground that earlier bail application was rejected by the Coordinate Bench. Learned Counsel submits that the liberty of the petitioner is being curtailed illegally.

5. Learned Counsel for the State has submitted the judgment of Vihaan Kumar (supra) has already been considered by this Court as reflected from the order dated 24.11.2025 and 23.12.2025. Learned counsel for the State submits that this Court in the successive bail application cannot review the earlier order of the Coordinate Bench of this Court. Learned counsel for the State submits that as per medical report dated 24.02.2026 of Superintendent, Siliguri Special Correctional Home, Md. Sabir is normal.

6. The Court has considered the submissions. This Court is fully conscious of the fact that liberty of an individual is most sacrosanct and the

rule is bail. The bail can be declined only in the exceptional circumstances. However, at the same time this Court is fully sensitized about the judicial propriety and judicial discipline. Admittedly bail applications of the petitioners have been dismissed twice by the Coordinate Bench of this Court. The orders dated 24.11.2025 of the Coordinate Bench of this Court in CRM (NDPS) 463 of 2025 and CRM (NDPS) 464 of 2025 are detailed order touching upon the judgments of Firoz Alom & Anr. (supra) as well Vihaan Kumar (supra). The Coordinate Bench of this Court has also discussed other judgments cited by the learned counsel for the petitioners. The law regarding the successive bail application is very well settled.

7. In State of Maharashtra vs. Captain Buddhikota Subha Rao, 1989 Supp (2) Supreme Court Cases 605, it has inter alia been held as under:

“7. In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. One such Application No. 36 of 1989 was rejected by Suresh, J. himself. Undeterred the respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a common order on 6-6-1989. Unfortunately, Puranik, J. was not aware of the pendency of yet another bail application No. 995 of 1989 otherwise he would have disposed it of by the very same common order. Before the ink was dry on Puranik, J.'s order, it was upturned by the impugned order. It is not as if the court passing the impugned order was not aware of the decision of Puranik, J.; in fact there is a reference to the same in the impugned order. Could important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the

respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J., only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him. In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as a judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency. In their view that we take we are fortified by the observations of this Court in para 5 of the judgment in *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*. For the above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation. That is what prompted Shetty, J. to describe the impugned order as 'a bit out of the ordinary'. Judicial restraint demands that we say no more”.

8. In Kalyan Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav & Anr., (2005) 2 Supreme Court Cases 42 it has, inter alia been held as under:

“18. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so.

19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had

been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. *The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country”.*

9. In Lt. Col. Prasad Shrikant Purohit vs. State of Maharashtra, (2018) 11

SCC 458, it has inter alia been held as under:

“30. *Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications”.*

10. In Prabneet Singh vs. State of West Bengal & Ors., 2025 SCC OnLine

Cal 6440, it has inter alia been held as under:

“12. *In respect of successive bail application, it is settled proposition that successive bail application should be entertained only when there are drastic change in the circumstances during the period between dismissal of earlier bail application and filing of fresh bail application. The Court should differ from the earlier opinion, when there are substantial change in circumstances. However, in the case of cosmetic changes in circumstances it does not grant the jurisdiction to vary from the earlier decision. Merely filing of the chargesheet may not be a substantial change of circumstances in the present case which could entitle the petitioner to be admitted to bail. The earlier bail application was*

rejected by the Coordinate Bench of this Court vide a detailed and speaking order. This Court find itself unable to exercise the discretion of bail in view of the earlier rejection of the bail and no substantial change in circumstances. Hence the bail application is rejected at this. However, the petitioner is always be at liberty to move an application for bail, in view of the change of circumstances. However, learned Trial Court is directed to proceed with the matter expeditiously”.

11. The perusal of the about said judgments make it apparently clear that the Court while exercising its jurisdiction for subsequent bail application has to exercise the jurisdiction with restraint and circumspection to consider the reasons and grounds on which the earlier bail applications were rejected. The successive bail application can be considered only if there are fresh grounds which were not available at the time of previous bail application. It is also a settled proposition that even the subsequent development cannot be a cosmetic change of circumstances and has to be substantial to differ from the earlier opinion. The drastic change in circumstances can only persuade the Court to take a different view from the earlier opinion. The Court while dealing with the subsequent bail application cannot sit as an Appeal Court over the earlier order passed by the Coordinate Bench. The Court while hearing subsequent bail application cannot comment on the correctness of the earlier Bench being the Coordinate Bench. The Court while delivering a judgment speaks for the entire Court. Thus, it is a matter of judicial discipline and propriety that in the subsequent bail application the Court cannot take a different view, unless there are substantial changes of circumstances. However, change in law may also persuade the Court to take a different view in the subsequent bail applications.

12. The Courts have a bounden duty to maintain the dignity of the justice delivery system. Judicial Discipline, Propriety and Comity demands that the Court in the subsequent bail application cannot take a different opinion without there being a substantial change in the fact situation. The Court cannot act in a manner which may give an impression of inconsistency. In the earlier orders on bail application dated 24.11.2025 the Coordinate Bench has discussed in detail all the grounds taken by the petitioner in the present bail application. The Court do not find any change in the fact situations. Then Bench is also constrained to remark that successive bail application may in a given case may also indicate towards Bench hunting, which has to be discouraged in all the circumstances. The medical report filed by the State also do not entitle the petitioner to be enlarged on bail. Before parting with it is also pertinent to mention here that these bail applications were heard and decided in the Circuit Bench. Hon'ble the Chief Justice determines the roster for every Circuit Bench, which is normally for two weeks. Therefore, this Court did not have the option of the sending this bail application to the same Bench. Thus, there is no ground to differ from the earlier opinion of the Coordinate Benches. In view of the discussion made herein above the bail application is rejected.

(Dinesh Kumar Sharma, J.)