

27.02.2026
Ct. No.6
D/L 24
Mujahid

In The High Court At Calcutta
Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction

CRM (NDPS) 144 of 2026

In Re: An application for bail under Section 483 of the BNSS, 2023 in connection with Sahebganj P.S. Case No. 505 of 2025 dated 12.09.2025 under Sections 20(b)(ii)(C)/29 of the NDPS Act, 1985.

And

In the matter of: **Mithun Das & Anr.**

....Petitioners

Mr. Rajdeep Mazumdar, Sr. Adv.
Mr. Avrajyati Das
Mr. Pritam Roy
Ms. Supriya Singh
Mr. Sayan Mukherjee
Mr. Rajdeep Das
Ms. Susmita Ghosh

...for the petitioners

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Bhaskar Das
Mr. Subhasish Misra

...for the State

1. Briefly stated the case of the petitioners are that on 28.08.2025 allegedly three bogs containing ganja like substance was recovered from the possession of petitioner no.1. Petitioner no.2 was asserted subsequently on the statement of petitioner no.1

2. Learned senior counsel for the petitioners submits that the present case arises out of political rivalry as the petitioners are qualified, dignified and well-respected members of the society and they are active supporters and members of a

political party being the party in opposition in the State of West Bengal. Learned senior counsel submits that petitioner no.1 holds an official position within the said opposition party being the IT convenor of Dinhata No.3 Mandal. Learned senior counsel submits that such kind of false cases are made immediately before the assembly elections. Learned senior counsel submits that there are no criminal antecedents of the petitioners. Learned senior counsel submits that the investigation itself is not being conducted in accordance with the law. Learned senior counsel submits that there are violations of procedure and the directions made by the court from time to time. Learned senior counsel submits that since recovery itself is doubtful, this court can have a reasonable ground to believe that the petitioners have not committed the offence. Learned senior counsel submits that the charge-sheet has been filed and trial may take a long time.

3. Learned counsel for the State has vehemently opposed the bail application. Learned counsel states that all the procedures have duly been followed. Learned counsel submits that there was a recovery of commercial quantity of 'Ganja' from the petitioner no.1 and the name of the petitioner no.2 appeared in the statement of petitioner no.1. Learned counsel further submits that the trial is yet to take place and, therefore, the petitioners may not be admitted to bail.

4. The Court has considered the submissions. There is a statutory bar on the grant of bail in NDPS Act. Section 37 places a bar that the bail can only be granted if the Court is satisfied

that there are reasonable grounds for believing that the petitioners are guilty of such offence.

5. The Supreme Court in **Mohd Muslim @ Hussainn vs. State (NCT of Delhi)**, 2023 LiveLaw (SC) 260 while dismissing the scope of jurisdiction for bail inter alia held as under:-

“18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the Court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (sections 436, 437 and 439 Cr.P.C.) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc), which apply over and above the ordinarily bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In case where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice even in serious offences like murder, kidnapping, rape etc. on the other hand, the court in these cases under such special acts, have to address itself principally on two facts; likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such condition on the ground that liberty of such citizens have to in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e. that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention ad unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as

enacted under Sections 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved/ The judgements of this court have, therefore, emphasized that the satisfaction which courts are expected to record i.e. that the accused may not be guilty is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigations (as held in *Union of India v Rattan Malik*) Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having regard to these factors the court is of the opinion that in the facts of his case, the appellant deserves to be enlarged on bail."

6. On perusal of the aforesaid judgment makes it clear that the scope of jurisdiction at the stage of the final determination of the guilt is different from the scope of jurisdiction at the state of bail. The petitioners are in custody for approximately 180 days and 118 days respectively. The speedy trial is an important facet of fundamental trial. The Supreme Court in the case of **Union of India vs. K.A. Najeeb**, (2021)3 SCC 713. It was *inter alia* held that even in cases under Unlawful Activities Prevention Act (UAPA) the jurisdiction of the constitutional courts shall not be ousted to grant bail on grounds of violation of Part III of the Constitution which covers within this protective ambit not only due procedure and fairness but also access to justice and speedy trial.

7. The Hon'ble Division Bench of this Court taking into account, the stringent provisions of the bail laid down certain directions in **Kalu Sk. @ Kuran vs. State**, CRM (NDPS) 492 of 2022 and **Kabir Sk. vs. State**, CRM (NDPS) 493 of 2022 vide order dated 22nd June, 2022. The Hon'ble Division Bench of this Court passed certain directions which are as under:-

“Accordingly, we direct as follows:-

- (i) In all cases involving recovery of narcotic substance particular recovery of narcotic above commercial quantity, seizing officers shall made a vide recording of the entire procedure unless for reasons beyond the control of seizing officers, they are unable to do so;
- (ii) Reasons for failing to videograph the recovery proceeding must be specifically recorded in the investigation records particularly contemporaneous documents including seizure/inventory list;
- (iii) Superior Police Officer not lower than the rank of Additional Superintendent of Police shall monitor recovery of narcotic substance above commercial quantity within their territorial jurisdiction and ensure due compliance of statutory provisions regarding search and seizure including compliance of the directives (i) and (ii) relating to videography of recovery and/or recording of adequate reasons for departure from such procedure;
- (iv) Non-compliance of the directives (i) and (ii) relating to videography of recovery and/or failure to record just reasons in contemporaneous documents for its non-compliance would attract departmental proceeding so far as the seizing officer is concerned;
- (v) Director General of Police shall issue necessary directions for due compliance with the aforesaid directives;
- (vi) Superintendent of Police/Commissioner of Police in each district/commissionerate shall undertake training programmes to spread awareness and capacity building of officers regarding compliance of statutory requirements in the matter of search and seizure of narcotic substance under NDPS Act and compliance of the aforesaid directives relating to vidiogrpah of recovery including collection, preservation and production of such electronic evidence in Court”

8. In the present case, admittedly as being stated by the learned counsel for the State that no video recording was done

by the seizing officer. Nor is there any justification for such non-compliance.

9. Perusal of the communication, S.I. Himadri Ghosh, IO Nayarhat I/C under Sahehganj P.S. Coochbehar on the basis of which FIR was lodged also indicates that seizure was not video-graphed.

10. Thus, apparently there is a clear violation of the directions laid down by the Hon'ble Division Bench of this Court. It is the bounden duty of this courts to ensure that the directions given by the Court are fully complied with in its true letter and spirit. It is a matter of regret that the police despite such directions have failed to comply with the same. Such directions become more necessary in cases where there is alleged recovery of contraband articles. Procedures are laid down to ensure that safe-guards to fulfill the constitutional mandates are complied with. Non-compliance of the same is serious breach.

11. Thus, taking into the account and facts and circumstances of the case, the petitioners, namely, **Mithun Das** and **Sushanta Das** be released on bail upon furnishing a personal bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 1st Court (NDPS), Coochbehar, subjection to the condition that the petitioners shall join the investigation as and when direction by the investigating officer. The petitioners shall not threaten, intimidate or tamper the complainant or members of the family in any manner whatsoever. The petitioners shall not leave the

jurisdiction of the learned trial court until further orders. In case the petitioners violate any such condition the prosecution is at liberty to move an application for cancellation of bail.

12. The application for bail is allowed.

13. This Court sincerely hope and trust DGP, West Bengal shall ensure that the directions in order dated 22nd June, 2022 are fully complied in its letter and spirit. The DGP, West Bengal may also initiate the proceedings as laid out in the direction in accordance with the law.

14. CRM (NDPS) 144 of 2026 stands disposed of.

15. Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all usual requisite formalities.

(Dinesh Kumar Sharma, J.)