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

19.11.2026
Ct No.5
Item No.10
PA

CRM (NDPS) 246 of 2026

In Re:- An application for Bail under Section 483 of the Bharatiya Ngarik Suraksha Sanhita, 2023 corresponding to Section 439 of the Code of Criminal Procedure, 1973 in connection with Ghoksadanga P.S. Case No.700 of 2024 dated 26.12.2024 under Sections 20(b)(ii)(c)/27A/28/29 of the NDPS Act, 1985.

And

Rejected

In Re: Rahul Kashyap

...Petitioner

Ms. Suparna Pal, Adv.

...for the petitioner

Mr. Avrojyoti Das, Ld. A.P.P.
Mr. Gobinda Ghosh, Adv.
Ms. Rajyarshree Ghosh, Adv.

...for the State

1. The Learned Advocate representing the petitioner persuaded the innocence of the petitioner to be a passenger of a truck being ignorant and unaware of the nature of articles seized by the police on interception of the truck. Moreover, the grounds arrest as statutorily and constitutionally mandated were not informed to him and relied on the decisions cited in ***Jaskaran Jeet Singh Deol vs. State of Punjab*** *[2026 SCC OnLine SC 1939]* and paragraph 22 of the decision cited in 2026 SCC OnLine SC 1939. It was further urged the violation of Articles 21 and 22 of the Constitution of India as observed by the Hon'ble Supreme Court in

Mihir Rajesh Shah vs. State of Maharashtra & Anr. *[(2026) 1 SCC 500]*, in failure to inform the grounds of arrest to the illegal, securing the accused to be released on bail.

2. It was further agitated the process of search, seizure, labeling and inventory was *de hors* the law as leaves of *ganja* were shown to have been seized which did not fall within the exact definition of the term 'ganja' which excluded the seeds and leaves when accompanied by the tops, including the flowering or fruiting tops of the cannabis plant and relied on paragraphs 5, 6 and 7 of the decision cited in ***Mohammad Jakir Nawab Ali v. State of Maharashtra*** *[2024 SCC OnLine Bom 3198]*.
3. It was further submitted the trial has not proceeded and the petitioner being in custody for nearly two years be released on bail.
4. The Learned Advocate representing the State submitted the petitioner along with the co-accuseds were instrumental in transporting the contraband articles from one State to another. The truck was not public transport vehicle whereby the accused persons could have been passengers. Moreover, the directions of the Hon'ble Supreme Court in *Mihir Rajesh Shah* (supra) had been categorically prospective debarring its applicability in the present case to have been registered prior to the pronouncement of the aforesaid judgment and relied on paragraphs 21 and 22 of the decisions cited in *2026 SCC OnLine SC 1939*.
5. The Learned Advocate for the State further relied on the decision cited in ***Hira Singh & Anr. v. Union of India & Anr.*** *[(2020) 20 SCC 272]* emphasizing the entire bulk of the contraband articles

were to be considered to ascertain the exact quantity inclusive of any neutral substances referring to the leaves of the cannabis in the instant case contrary to the submission of the Learned Advocate for the petitioner.

6. The prayer for bail was vehemently opposed as huge quantity of contraband had been seized and on ground of mere technical irregularity the prayer for bail shall not be allowed.

7. The case diary at page 54 mentioned the 'Memo of Arrest' wherein the date and time of arrest, place of arrest etc. in the respective columns have been delineated. It also stated 'for possessing and carrying contraband *ganja* (cannabis). It further stated 'his family members have been informed regarding his arrest'. The notice under Section 50 of the NDPS Act at page 12 of the case diary was read over, translated in Hindi and explained to the accused person, which bore the signature of the petitioner. The petitioner, therefore, had been entirely conscious of the process in progress pertaining to his apprehension. The mandate of *Mihir Rajesh Shah* (supra) being prospective cannot be construed to be effective in the present case instituted at a prior stage. The documents in the case diary at pages 213 and 214 provided the opinion of SFSL to be *'ganja'* in respect of examination of the samples.

8. The commercial quantity of the contraband as well as the materials in the case diary and the opposition on behalf of the State, failed to neutralize the restrictions of Section 37 of the NDPS Act, this Court is not inclined to grant the prayer for bail.

9. The prayer for bail stands **rejected**.

10. Accordingly, CRM (NDPS) 246 of 2026 is disposed of.

(Ananya Bandyopadhyay, J.)