

11.06.2026
Court No.4
Item No.5
AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

CRM (NDPS) 262 of 2026

In Re: - An application for bail under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 in connection with **Matigara**
Police Station Case No.**94 of 2026** dated **20.02.2026** under
Section **21(c)** of the NDPS Act.

And

In the matter of: **Maina Khatun @ Nayna Khatun @ Mayna
Khatun**

....Petitioner.

Mr. Prajnadeepta Roy
Mr. Jaimallya Bhattacharya

...For the Petitioner.

Mr. Avrojoyti Das, APP
Mr. Debabrata Rai

...For the State.

1. Learned counsel representing the petitioner submits that the
accused petitioner is a lady and being a lady she has been arrested
at about 18.20 hours which is after sunset and that too by a male
police officer without complying the provisions laid down under
Section 43 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and
learned counsel specifically relies upon Section 43(5).

2. Learned counsel further submits that there was no presence
of lady police personnel at the time of arrest. In support of his
contention, learned counsel places the memo of arrest. Harping
upon the fact of non-compliance of the aforementioned Section, the
learned counsel prays for granting bail to the petitioner.

3. Learned Additional Public Prosecutor while opposing the prayer for bail places the FIR and indicates that at about 17.10 hours, being identified by the source, the petitioner was apprehended near the Chota Hanuman Mandir, Matigara Bazar after being chased and thereafter she was examined and on interrogation the accused petitioner had disclosed her name and address. It has been further submitted that at about 17.30 hours, the IC, Matigara Police Station being a Gazetted Officer arrived at the spot where he was briefed about the incident. The learned Additional Public Prosecutor in this regard furnishes a judgment passed by an Hon'ble coordinate Bench of this Court passed in **CRM (NDPS) 244 of 2025** in the case between **Serina Bibi Vs. The State of West Bengal**.

4. Thus, the issue which arises is as to whether the accused petitioner has been arrested after sunset and without following the provisions as laid down under the Bharatiya Nagarik Suraksha Sanhita, 2023.

5. Considered the submissions of the learned counsels and after perusal of the judgment cited, this Court relies upon paragraph 46 of the judgment passed in the **Directorate of Enforcement Vs. Deepak Mahajan and Anr.** reported in **(1994) 3 SCC 440** wherein the following has been mentioned:

“46. The word ‘arrest’ is derived from the French word ‘Arreter’ meaning “to stop or stay” and signifies a restraint of the person. Lexicologically, the meaning of the word ‘arrest’ is given in various dictionaries depending upon the circumstances in which the said expression is used. One of us, (S. Ratnavel Pandian, J. as he then was

being the Judge of the High Court of Madras) in Roshan Beevi v. Joint Secretary, Government of T.N. [1984 Cri LJ 134 : (1984) 15 ELT 289 : 1983 MLW (Cri) 289 (Mad)] had an occasion to go into the gamut of the meaning of the word 'arrest' with reference to various textbooks and dictionaries, the New Encyclopaedia Britannica, Halsbury's Laws of England, A Dictionary of Law by L.B. Curzon, Black's Law Dictionary and Words and Phrases. On the basis of the meaning given in those textbooks and lexicons, it has been held that:

"[T]he word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested."

6. From the aforementioned contents, it transpires that question of arrest depends upon the fact of apprehension or restrain or deprivation of one's personal liberty. Whether the personal liberty was deprived or not is the moot point.

7. From the FIR, it transpires that at about 17.10 hours the accused petitioner was apprehended and detained and thereafter being interrogated she had disclosed her name and address and thereafter on search, the seized substance was obtained. From the memo of arrest, it transpires that there was presence of lady constable.

8. The aforementioned fact does not go in favour of the petitioner accused. In such circumstance, the question raised by learned counsel representing the accused petitioner is not acceptable. As such, this Court is not inclined to grant bail to the petitioner.

9. The application for bail is thus rejected.

10. The case diary is returned to the learned Additional Public Prosecutor in Court today.

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

(Supratim Bhattacharya, J.)