CIRCUIT BENCH OF
CALCUTTA HIGH COURT AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION

25.11.2026
Ct No.5
Item No.17
PA

CRM (NDPS) 305 of 2026

In Re:- An application for Bail under Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023.

And

Allowed

In Re: **Sapiyar Ali @ Sopian Ali @ Sapiyan Ali**

...Petitioner

Mr. Sourav Ganguly, Adv.
Ms. Rishta Chakraborty, Adv.

...for the petitioner

Mr. Avrojyoti Das, Ld. A.P.P.
Mr. Atul Dong, Adv.

...for the State

1. The Learned Advocate representing the petitioner submitted the petitioner to have been arrested on 14.08.2025 in connection with seizure of 456 gms. of YABA-like tablets along with two mobile phones suspected to be used in the commission of the alleged offence under Section 21(C)/29 of the NDPS Act. The petitioner along with co-accused person was arrested under Section 43 of the NDPS Act and was informed of the grounds of arrest. However, the petitioner had been falsely implicated in connection with such recovery and videography in respect of search and seizure was not conducted violating the mandatory guidelines as stipulated in the decision of the Division Bench of this Court in CRM (NDPS) 492 of

2022 with CRM (NDPS) 493 of 2022 which, *inter alia,* broadly stated as follows:-

> *"Accordingly we direct as follows:*
>
> *(i) In all cases involving recovery of narcotic substance particularly recovery of narcotic above commercial quantity, seizing officers shall make a video recording of the entire procedure unless the 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;*
>
> *……."*

2. It was further contended that in course of videography any impediment occasioned as stated by the Learned Advocate representing the State that the storage of the memory card having been exhausted further videography could not be accomplished, the police officials who were in possession of mobile phones could have utilized the same to complete the process of videography. The procedure under Section 51 of the NDPS Act was not followed in entirety. The provisions under Section 105 of the BNSS and Section 185 (2) of the BNSS were also not followed. He further relied upon the decision of the Hon'ble Supreme Court in SLP

Criminal No.11712/2025 [Rahul Rahaman Vs. Narcotic Control Bureau] wherein the Hon'ble Supreme Court observed as follows:-

"……..

However, we are informed that the seizure of contraband, viz., 16549 bottles of Phensedyl Cough Syrup, was effected without video recording of such seizure. This was not in keeping with the directions of the High Court at Calcutta in C.R.M. (NDPS) No.492/2022, titled "Kalu Sk. @ Kuran Vs. State" and C.R.M. (NDPS) No.493/2022, which recorded that such video recording should be made of the entire procedure in relation to the seizure of narcotics and, in the event of failure, reasons therefore were to be specifically recorded in the investigation record and more particularly, the contemporaneous documents including seizure/inventory list. The final order dated 11.11.2022 was also on the same lines.

Admittedly, there was failure on the part of the authorities in abiding by this mandate in the case on hand. An excuse has been offered that there was a cyclone at the relevant time, affecting the cameras, which were available with the officials. There is no explanation, however, as to why such recording was not done on the mobile phones which would have been available with the officials.

Further, we find that charges have already been framed against the accused and we are informed that 13 witnesses have been listed by the prosecution. It is, therefore, clear that the trial would not conclude in the near future.

In these circumstances, we are of the opinion that the appellant, Rahul Rahaman, would be entitled to relief at this stage.

The appeal is accordingly allowed, setting aside the impugned judgment/order passed by the High Court.

The appellant, Rahul Rahaman, is directed to be released on bail in relation to the aforesaid complaint case, on

such appropriate terms and conditions as may be fixed by the Special Court.

……"

3. The Learned Advocate representing the petitioner submitted the charge-sheet has already been filed on 9th of February, 2026 and relying upon the decision of the Supreme Court in *Rahul Rahaman vs. Narcotic Control Bureau* (supra) prayed for grant of bail.

4. The Learned Advocate representing the State placed before this Court a report filed by the Investigating Officer in respect of the instant case whereby it was, *inter alia*, stated as follows:-

"…….

1. Presence of Executive Magistrate and Videography-

The search and seizure operation at Krishnapur Beltala Bazar was conducted in the presence of Executive Magistrate Shri Sanjay Ghising (BDO Tufanganj-1 Block) thereby ensuring compliance with the statutory requirements.

The FIR specifically records that the videography of the search and seizure procedure was conducted by Anirban Barma, who accompanied the Executive Magistrate to the spot. If required during the trial to prove the case of the prosecution, the relevant persons will be examined.

2. Electronic Evidence and Seizure Documentation-

During the search and seizure operation, approximately 456 grams of YABA-like tablets, one motorcycle and two mobile phones were seized in the presence of independent witnesses, namely Ashadul Sheikh and Moyan Mandal, and the seizure was duly documented.

It is acknowledged that the memory card used for videography of the search and seizure procedure was not formally seized. The recording was also partially interrupted due to the memory card reaching its full storage capacity. However, the available footage depicts the relevant

proceedings of the search and seizure operation and forms part of the material supporting the prosecution case.

3. Consultation with Ld. Public Prosecutor regarding Examination of Videographer-

In connection with the procedural observation relating to the videography of the search and seizure operation and the omission of the videographer's name from the witness list of the charge-sheet, the Ld. Public Prosecutor in charge of the Ld. ADJ, 1st Court (NDPS), Cooch Behar was consulted.

Upon such consultation, it was advised that the videographer, namely Anirban Barma, may be sunmmoned and examined as a witness during the course of trial in accordance with Section 348 of BNSS, if his evidence is considered necessary for the just decision of the case, so as to explain and prove the videography conducted during the search and seizure operation. The search and seizure can also be proved by way of examination of the seizure witnesses and other official witnesses.

……"

5. The Learned Advocate representing the State claims authority on the prerogative of the prosecution to cite the witnesses and the Court cannot compel the prosecution to produce any witness for recording evidence barring exceptional circumstances. The extent to which the memory card was used for videography of the search and seizure procedure was sufficient to prove that the process of search and seizure had been conducted and the videographer would be produced before the Court for examination as a witness during the trial complying the provisions of Section 348 of BNSS, if at all it would be required.

6. The process of search and seizure if at all to the extent of the same being videographed in the memory card and could not be

completed for scarcity of space in the same could have been mentioned in the records on the CD as per the directions of the Division Bench of this Court in CRM (NDPS) 492 of 2022 read with CRM (NDPS) 493 of 2022 in the matter of *Kalu Sk. @ Kuran Sk.* The certificate to that extent of video recording as statutorily mandated under Section 63(4) of Bharatiya Sakshya Adhiniyam had not been issued. The provisions under Section 51 of the NDPS Act and Section 105 and Section 185(2) of the Bharatiya Nagarik Suraksha Sanhita had not been followed. The charge-sheet had been filed and the prosecution could not furnish legitimate reasons to comply with the process of videography of search and seizure as the memory card used for such videography had not been formally seized which debarred the same to be produced before the Court for marking the same as Exhibit for probity. Accordingly, this Court is inclined to release the petitioner on bail on the following terms and conditions.

7. Accordingly, the petitioner namely **Sapiyar Ali @ Sopian Ali @ Sapiyan Ali** shall furnish bond of Rs.50,000/- (Rupees Fifty Thousand Only) with two sureties of the like amount each, one of whom must be local to the satisfaction of the Learned Additional Sessions Judge, 1st Court (NDPS) Cooch Behar.
8. The petitioner shall be physically present on each and every date fixed before the Learned Trial Court and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever. The petitioner shall submit his address of residence to the Learned Trial Court along with his mobile number not be

changed without prior permission of the Learned Trial Court. On further condition, the petitioner shall meet the Officer-in-Charge of the concerned Police Station once in a week until further orders and without prior permission of the concerned Trial Court, he shall not leave the jurisdiction of the same.

9. Accordingly, **CRM (NDPS) 305 of 2026** stands **allowed** and disposed of.

10. All parties shall act in terms of the server copy of the order downloaded from the official website of this Court.

11. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ananya Bandyopadhyay, J.)