D/L 19

25.11.2026
Rohit/Chanchal
A.R.(Ct.)
ct.no.5

In the High Court at Calcutta

Criminal Miscellaneous Jurisdiction
Circuit Bench at Jalpaiguri

C.R.M (NDPS) 427 of 2026

Rahul Islam
Vs
The State of West Bengal

In Re: An Application for Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with **Sahebganj** Police Station Case No. **228 of 2025** dated **26.04.2025** under Sections **21(c)/29** of the NDPS, 1985.
And
In the matter of : Rahul Islam

...Petitioner.

Mr. Prajradeepta Roy
Mr. Sabir Ali
Mr. Jaimallya Bhattacharya

...for the Petitioner

Mr. Avrojyoti Das, Ld. A.P.P
Mr. Reshab Kumar
Mr. Arko Sarkar

...for the State

1. The learned Advocate representing the petitioner urged the period of detention of 459 days of the petitioner. The charge-sheet had been filed and the trial to have not commenced as regards 15 C.S.W's. The petitioner had been falsely implicated in the instant case and the process of sampling as enumerated in Chapter III in Rule 8, 9, 10, and 11. of G.S.R. 899(E) being the Notification, Dated 23rd, December, 2022 issued by the Department of Revenue, Ministry of Finance was not followed. It was further contended out of 103 bottles of Eskuf cough syrup being seized only one bottle in sealed condition in contradiction to

the sampling process of 5 ml of cough syrup being extracted from the bottle, had been sent for forensic examination. Moreover, the memo of arrest did not signify the reasons of the petitioner to be arrested and explained to him in the language comprehended by the petitioner. The learned Advocate representing the petitioner further relied upon the decisions. cited in ***Pankaj Bansal vs. Union of India and Ors. (2024) 7 SCC 576***, ***Prabir Purkayastha vs. State (NCT of Delhi) (2024) 8 SCC 254***, ***Vihaan Kumar vs. State of Haryana and Ors. 2025 SCC OnLine SC 269***, ***Mihir Rajesh Shah vs. State of Maharashtra and Anr. 2025 SCC OnLine SC 2356***, ***Dr. Rajinder Ranjan vs. Union of India and Anr. 2026 SCC OnLine SC 802*** *and* ***JaskiratJeet Singh Deol vs. State of Punjab 2026 INSC 1022***.

2. Moreover, the batch number of the aforesaid bottle of the cough syrup as indicated in the report of the forensic expert was not mentioned in the inventory prepared and accordingly seeks for releasing the petitioner on bail.

3. The learned Advocate representing the State relied upon the decisions of the Co-ordinate Bench of this Court dated 31.07.2026 In CRM (A) 434 of 2026 wherein the Co-ordinate Bench of this Court inter alia opined in paragraph 9 & 10 as follows:

> ***"9. The contention of the petitioner that the sampling was not representative and that the prosecution had failed to establish that all the 55 bottles contained the same nature of contraband***

substance, is a matter of evidence. The sample sent to the FSL must fairly represent the entire seized contraband. The effect of any irregularity in such sampling will depend on the facts of each case. The law requires preparation of inventory, drawing of representative sample, sealing and certification by the Magistrate in order to preserve the evidentiary value of the seized materials. The materials have been considered.

10. This is not the appropriate stage for grant of pre-arrest bail upon holding that the sample drawn did not represent the homogenous lot of 55 bottles of Eskuf syrup, and as such, only small quantity of contraband substance was seized."

4. He further relied upon the observation of The High Court at Delhi in 2021 SCC online DEL 3808 at paragraph 8 as follows:

"8. In the instant case, as per the prosecution 200 bottles of phensedyl codeine cough syrup were recovered. The seized bottles were of the same size and were having batch numbers on them i.e. batch No.PHB7217 & PHB7236. Therefore, in these circumstances, since these were cough syrup bottles which are ordinarily available in the market for treating cold and cough, cannot be said to have different concentration of medicines as they are prepared under the same formulation as per their batch numbers. Therefore, in my opinion, there is no

infirmity in the manner in which the sample has been drawn. As far as the non compliance of mandatory provisions of Section 50 of the NDPS Act is concerned, the same is a matter of trial. The application lacks merits and the same is, therefore, dismissed."

5. The Learned Advocate representing the State referred to the inventory list prepared and endorsed by the the Additional District and Sessions Judge, 1st Track Court, NDPS which stated the composition of the bottle comprising of 100 ml of Eskuf cough syrup to have a composition of CODINE and TRIPROLIDINE HYDROCHLORIDE which was mentioned in the report of the forensic expert in the "description of articles" along with the batch number, date of manufacture and the expiry date. Since the composition of the cough syrup after examination was detected to be the same, the lapse if any on the part of the prosecution to mention the batch number, at the stage of deciding an application for granting the prayer for bail shall not dilute the restrictions of Section 37 of the NDPS Act. Moreover, the seizure list at page 11 & 12, arrest memo at page 13 and the information to arrest person under Section 47(1)/47(2)/48(2) of BNS stated the reasons of arrest to the present petitioner being signed by the same. The petitioner having signed the seizure list, the documents pertaining to the labels of the seized contraband had been aware of the reasons of his arrest and could not have subsequently taken the plea that the petitioner was not informed or was ignorant of the reason

of his arrest. Petitioner is in custody since 26.04.2025. Though the charge-sheet has been submitted, however, the period of detention at this stage does not attract the relief to be granted under Article 21 of the Constitution of India pending commencement of trial.

6. The memo of evidence, the seizure list, the memo of arrest, the inventory prepared by the concerned Trial Court, the opinion of the forensic expert in the case diary indicated seizure of commercial quantity of narcotic substances. At the nascent stage, the Court dealing with an application for grant of bail prima facie is to see whether the seized contrabands are of commercial quantity and could surpass the twin challenges under Section 37 of the NDPS Act. The composition of the Eskuf cough syrup as stated in the inventory matched with the final examination report of the same narcotic substance to have been present in the bottle sent for forensic examination. Whether the process of sampling was in accordance with the Rules as aforesaid and the batch numbers to have been incoherent and planted for the purpose of fabrication to falsely indict the petitioner are matters to be dealt during Trial. The seizure list, the memo of arrest and the document annexed thereto amply shows the reason of arrest to have been communicated to the petitioner. The petitioner having failed to overcome the fetters of Section 37 of the NDPS act is not entitled to be released on bail. The Trial Court is directed to conclude the Trial as expeditiously as possible without granting unnecessary adjournments to

either of the parties disregarding cease work, if any, called by the local bar.

7. Accordingly, CRM (NDPS) 427 of 2026 is **dismissed**.

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

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

(Ananya Bandyopadhyay, J.)