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

19.11.2026
Ct No.5
Item No.29
PA

CRM (NDPS) 493 of 2026

In Re:- An application for Bail under Section 483 of the Bharatiya Ngarik Suraksha Sanhita, 2023 in connection with Cooch Behar GRPS Police Station Case No.29 of 2025 dated 05.07.2025 under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In Re: Sanjit Das and Sujit Shilsharma

Allowed ...petitioners

Mr. Sourav Ganguly, Adv.
Mr. Bibek Tarafder, Adv.
Ms. Rishita Chakraborty, Adv.
Mr. Gopal Roy

...for the petitioners

Mr. Avrojyoti Das, Ld. A.P.P.
Mr. Gobinda Ghosh, Adv.
Mr. Tapas Prasad, Adv.

...for the State

1. The Learned Advocate representing the petitioner submitted based on a complaint filed by the complainant on 04.07.2025, the present petitioners had been arrested after recovery of 10.500 kgs. of *ganja* from two bags which was clubbed to be 21 kgs of *ganja* thrust with commercial quantity.
2. The Learned Advocate representing the petitioner further submitted the absence of conspiracy between both the petitioners and relied on the decision of the Hon'ble Supreme Court cited in *2025 SCC OnLine SC 1779 (Nadeem Ahamed Vs. State of West Bengal).*

3. It was further urged that the provisions of Section 29 of the NDPS Act, 1985 were not applicable to the present petitioners and in connection with alleged intermediate quantity of the contraband article contrary to the commercial quantity claimed on behalf of the State and considering the period of detention being arrested on 05.07.2025 prayed for grant of bail.

4. The Learned Advocate representing the State opposed the prayer for grant of bail on the ground of CDR between both the petitioners as mentioned in the charge-sheet whereby the elements of conversation and conspiracy between both the petitioners being established the amount of *ganja* seized individually to the extent of 10.500 kgs. cumulatively becomes 21 kgs. of *ganja* to attract the commercial quantity and the rigours of Section 37 of the NDPS Act and accordingly urged the prayer for bail shall not be allowed.

5. The inventory of seized narcotic drug and psychotropic substance under Section 52A(2) of the NDPS Act, 1970 at pages 70, 71 and 72 of the case diary specifically stated the quantity of *ganja* to the extent of 10.500 kgs. approximately to have been seized from the petitioners respectively. The certificate issued by the concerned Magistrate under Section 52A(3) endorsed such inventory of seized contraband articles.

6. The Learned Advocate representing the State further referred to pages 112 to 116 whereby mobile connectivity between the petitioners were detected and the charge-sheet had also mentioned of the CDR.

7. The Hon'ble Supreme Court in *Nadeem Ahamed Vs. State of West Bengal, inter alia,* observed as follows:-

> *".....*
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> *22. Merely because the two accused, walking side-by-side, were apprehended simultaneously, and both were carrying narcotic drug concealed on their body, the said coincidental happening, by itself, would not have rise to an inference that either of them had the knowledge about the contraband being carried by the other. These facts may give rise to a suspicion, but suspicion, however, cannot take place of poor.*
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> *23. If at all the prosecution intended to bring home the charge of conspiracy, and club the contraband recovered from both the accused persons together, SLP (Crl.) No (s). 9446-9447 of 2025 then positive proof to support the charge of conspiracy had to be presented. Such proof could not be substituted with mere inferences or conjectures. Positive and tangible evidence was necessary to establish, beyond reasonable doubt, that both accused persons had prior knowledge of the contraband in the other's possession. However, upon carefully analysing the evidence available on record, we find that, apart from the bald allegation that both the accused were seen walking together and were searched one after the other, not even a semblance of evidence was led by the prosecution, which can substantiate the charge of prior conspiracy between the two accused persons.*

24. Rather, upon going through the judgment of the trial Court, we find that, without there being any such evidence, the trial Court simply raised a presumption as to the culpable mental state by proceeding on an assumption that both the accused were conscious and aware of the contents of the packets stashed on the other's person. Such assumption is erroneous and absolutely unjustified on the face of the record for want of evidence to substantiate the same. Reference in this regard can SLP (Crl.) No (s). 9446-9447 of 2025 be made to the judgment of this Court in the case of Amarsingh Ramjibhai Barot v. State of Gujarat11. The relevant observations from the aforesaid judgement are reproduced below:-

> *"7. The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kg. The counsel urged that because of this error the High Court took the wrong view that the total opium recovered was of "commercial quantity" and, therefore, attracted Section 21(c) of the NDPS Act.*

> *8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld.* ***It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is 11 (2005) 7 SCC 550 SLP (Crl.) No (s). 9446-9447 of 2025 no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.****"*
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> *(Emphasis supplied)*

8. In the instant case, there were distinct procedures of samplen against separate carriers namely "American Tourister" and S-B Skyboom" wherefrom the aforesaid amount of contraband articles had been seized separately and sampled accordingly.

9. Mere CDR without voice recordings at this stage will not amplify or establish conspiracy between the petitioners to attract the provisions of Section 29 of the NDPS Act. Therefore, the amount of contraband articles seized individually from the petitioners cannot be accumulated to constitute commercial quantity. CDR only refers to mobile numbers connected at a specific date, time and cell tower location and it does not contain voice recordings or transcribes of what was spoken which can be treated as

supporting or corroborative piece of evidence rather than primary proof of guilt which is to be considered by the Trial Court and not at this stage.

10. The intermediate quantity, therefore, to the extent of 10.500 kgs. of *ganja* approximately does not contract the stringent restrictions under Section 37 of the NDPS Act. The petitioners had been in custody for more than a year and in view of the above observation, this Court is inclined to release the petitioners namely **Sanjit Das** and **Sujit Shilsharma** on bail of **Rs.50,000/- (Rupees Fifty Thousand Only) each** with two sureties of the like amount, one of whom is to be local. The petitioners shall not leave the jurisdiction of the Trial Court without prior permission and will inform the concerned police station as well as the Trial Court of the mobile number belonging to each of the petitioners without changing the same in absence of permission from the Trial Court. If the petitioners are in possession of any passport, shall submit the same before the Trial Court complying the requisite formalities.
11. Accordingly, CRM (NDPS) 493 of 2026 is **allowed** and, thus, disposed of.
12. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.
13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ananya Bandyopadhyay, J.)