JPD 6.
November 23, 2026.
MNS

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRM (A) 802 of 2026

In Re: - An application under Section 482 of the of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Naxalbari Police Station Case No. 157 of 2026 dated 20.06.2026 under Sections 21(b)/21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 corresponding to C.R. (N.D.P.S.) Case No. 80 of 2026.

And

In the matter of: Sehnaj Begum @ Sahana Begam @ Sahaj Begam Beg
…. petitioner

Mr. Subham Ghosh,
Mr. Mayank Roy, Advs.

… for the petitioner

Mr. Avrojyoti Das, APP,
Ms. Smita Mitra Sinha,
Ms. Rajyashree Ghosh, Advs.

… for the State

1. The present application has been filed for anticipatory bail in respect of an offence committed allegedly under the NDPS Act.

2. Learned counsel for the petitioner argues that the purported involvement of the petitioner in the offence stems from the statement of a coaccused person, which does not hold water in a criminal trial as valid evidence.

3. It is submitted that apart from the said statement, absolutely nothing has been produced, for example call records, or anything to establish contact between the co-accused and the petitioner, to connect the petitioner with the alleged offence.

4. Learned counsel also relies on a judgment of a learned Single Judge of the Delhi High Court in the matter of *Md. Irshad Vs. State Nct of Delhi* reported at *2022 Law Finder (Delhi) 1078* where the learned Single Judge relied on a judgment of the Supreme Court in the matter of *Union of India Vs. Rattan Mallik [(2009) 2 SCC 624]*, in which the Hon'ble Supreme Court observed that the twin conditions under Section 37 of the NDPS Act are cumulative and not alternative. The Hon'ble Supreme Court elaborated on the expression "reasonable grounds" which was interpreted to mean something more than prima facie grounds.

5. Learned APP appearing for the State, per contra, relies on an unreported judgment in the matter of the *State of Karnataka and another vs. Sadiq Pasha* where the Hon'ble Supreme Court considered the ratio laid down in *Tofan Singh Vs. State of Tamil Nadu* reported at *(2021) 4 SCC 1*, and held that the statement of a co-accused person does not have any evidentiary value and observed that the said proposition, although holds true for the penal statutes considered in *Tofan Singh (supra)*, might not be apposite while considering the NDPS Act.

6. However, in paragraph no. 13 of the said judgment, the Hon'ble Supreme Court held nonetheless that a confessional statement under Section 67 or a disclosure statement under Section 53A of the NDPS Act can have no evidentiary value in a trial and cannot lead to a conviction.

7. Learned APP next cites *Indresh Kumar Vs. State of Uttar Pradesh and another*, reported at *2022 SCC OnLine SC 2411*, where it was held, *inter alia*, that statements under Section 161 of the Cr.P.C may not be

admissible in evidence, but are relevant in considering the prima facie case against an accused in an application for grant of bail in case of a grave offence.

8. Learned counsel for the State further argues that since a specific allegation has been made against the petitioner to the effect that the petitioner sold the contraband articles to the person, who was apprehended, it would be a risk to society in the event the petitioner is left at large, free to commit further similar offence.

9. Learned counsel for the State further seeks to point out that there were calls between certain phone numbers allegedly belonging to the petitioner and that of the co-accused person on the basis of whose statement the petitioner has been embroiled in the case.

10. However, upon hearing learned counsel for the parties, the Court does not find any direct material to incriminate the petitioner at this stage even for the alleged sale of the contraband articles.

11. Despite learned counsel for the State alleging that from the call records obtained by the police, there appears to be a connection between the petitioner and the co accused who has been arrested, there is nothing on record till date to indicate as to who the phone number-in-question belongs to.

12. The Court cannot be unmindful of the fact that about five months have elapsed but till date no charge sheet has been filed.

13. That apart, the proposition laid down in *Indresh Kumar* (supra) is not apt in the present circumstances.There is a gulf of difference between admissibility in evidence of a statement under Section 161 of the Cr. P.C, which was held in the said judgment to be relevant in considering a

prima facie case against an accused, and the statement of a co-accused person, which does not hold its ground in a criminal trial even for the purpose of casting aspersion of involvement of a particular person in the alleged offence.

14. That apart, the Hon'ble Supreme Court itself, in *Sadiq Pasha's case*, categorically observed that it had no doubt that the confessional statement under Section 67 or a disclosure statement under Section 53A of the NDPS Act can have no evidentiary value in a trial and cannot lead to a conviction.

15. It was further held that Section 53A of the NDPS Act does not enable the disclosure of the co-accused to be placed before Court, especially when he is not examined as a witness or made an approver. The disclosure made by the co-accused who were apprehended at the spot about the identity and the name of the one who fled, it was held, is only a material which the Investigating Officer could use to gather further evidence, which alone could be the basis of a charge sheet or a conviction in a properly instituted trial.

16. However, in the said case, the Hon'ble Supreme Court was considering a case for quashing a criminal proceeding as opposed to the present case which relates to a prayer for anticipatory bail. Although quashing a proceeding at the outset might not be justified on the basis of evidentiary value of the material collected in investigation, nonetheless, the evidentiary value of such material, if the matter goes to trial, is a relevant consideration at the stage of anticipatory bail.

17. Secondly, even as per observation of the Hon'ble Supreme Court in *Sadiq Pasha* (supra), value of the disclosure by a co-accused was held

to be a material which could at best be used to gather further evidence in the context of a person who fled from the spot and could not be apprehended. The petitioner in the present case stands on a completely different footing, having not been involved, even as per the statement of the co-accused, in the commission of offence. The mere statement of he said co-accused person that the petitioner sold the contraband article to him has no evidentiary value whatsoever in respect of the petitioner.

18. Rather, the proposition laid down by the Hon'ble Supreme Court in *Rattan Mallik* (supra), which was discussed by the learned Single Judge of the Delhi High Court in *Ms. Irshad* (supra), is apt in the circumstances of the instant case.

19. Going by the said principle, the twin conditions under Section 37 of the NDPS Act stem from the self-same foundation of reasonableness and are cumulative, and not alternative, in nature.

20. From the circumstances discussed above, there are reasonable grounds for believing that the accused is not guilty of the alleged offence, which necessarily leads to the prima facie conclusion that the petitioner is also not likely to commit any such offence if granted anticipatory bail.

21. Moreover, no previous criminal antecedent of the petitioner has been made out by the State.

22. Accordingly, CRM(A) 802 of 2026 is allowed, thereby granting anticipatory bail to the petitioner.

23. In the event of arrest, the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/-, with two sureties of like amount each,

one of whom must be local, to the satisfaction of the learned Special Judge under the NDPS Act, Siliguri.

24. In such case, the petitioner shall not leave the territorial jurisdiction of the local police station where she resides and shall also meet the Investigating Officer once a fortnight as well as cooperate with the investigation in every manner.

25. Further, the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any Police Officer or the Court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)