

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

**27.02.2026  
Sl. no. 18  
Ct. No. 6  
Susanta  
(ALLOWED)**

**C.R.M. (NDPS) 676 OF 2025**

In Re : An application for bail under Section 439 of the Code of Criminal Procedure, 1973 corresponding to Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 in connection with Sitalkuchi Police Station Case No. 05 of 2025 dated 05.01.2025 under Sections 21(C)/29 of the NDPS Act.

And

In the matter of : **Rejaul Ashik**

.... Petitioner

Mr. Sourav Ganguly,  
Mr. Gopal Roy,  
Ms. Rishita Chakraborty,

.... For the petitioner.

Mr. Nilay Chakraborty, Ld. APP,  
Ms. Namrata Das (VC),

... For the State.

Present petition has been filed for bail on the ground that petitioner is in custody since January, 2025.

Learned counsel for the petitioner submits that earlier bail application moved by the petitioner was rejected by the Co-ordinate Bench of this Court vide order dated 30<sup>th</sup> June, 2025 in CRM(NDPS) 268 of 2025 and 17<sup>th</sup> November, 2025 in CRM(NDPS) 449 of 2025.

Learned counsel submits that in terms of the order dated 30<sup>th</sup> June, 2025, the prosecution has examined CW 2 Ekramul Haque, CW3 Karan Barman and CW4 Mamunur Ahmed.

Learned counsel submits that all three witnesses have not supported the case of the prosecution. Learned counsel further submits that as reflected in the testimony of PW-1, sub-Inspector Laden Dorjee Bhutia, Sitalkuchi Police Station, complaint there was serious violation of Section 42 of the NDPS Act. Learned counsel, therefore, submits that the petitioner may be released on bail.

Learned counsel for the State has vehemently opposed the bail application. Learned counsel submits that it is a serious offence relating to recovery of huge commercial quantity of contraband articles.

It has further been submitted that besides the above witnesses there are other witnesses also to prove the case of the prosecution.

Learned counsel for the State has further submitted that even the testimony of CW 2, CW3 and CW4 cannot be taken as totally adverse to the prosecution as these witnesses have deposed that they saw the incident. Learned counsel for the State has also submits that entire search was duly videographed.

The Court has considered the submissions. It is a matter of record that no recovery was effected from the petitioner. Section 37 of the Narcotic Drugs & Psychotropic Substances Act, 1985 places a bar upon releasing the person on bail in the conditions prescribed in the Act. In order to grant bail, the court is required to be satisfied on

the basis of the record produced before it that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further he is not likely to commit any offence while on bail. Such conditions are in addition to the limitation provided under BNS, 2023 of the Code of Criminal Procedure, 1973.

The Supreme Court in **Mohd Muslim @ Hussainn vs. State (NCT of Delhi) reported in 2023 Live Law (SC) 260** while discussing the scope of jurisdiction for bail inter alia held as under:-

***18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the Court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (sections 436, 437 and 439 Cr.P.C.) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be***

*innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc), which apply over and above the ordinarily bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In case where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice even in serious offences like murder, kidnapping, rape etc. on the other hand, the court in these cases under such special acts, have to address itself principally on two facts; likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such condition on the ground that liberty of such citizens have to in cases when accused of offences enacted under special laws – be balanced against the public interest.*

**19. A plain and literal interpretation of the conditions under Section 37 (i.e. that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention ad unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Sections 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.**

**20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved/ The judgements of this court have, therefore, emphasized that the satisfaction which courts are expected to record i.e. that the accused may not be guilty is only prima facie, based on a reasonable reading, which does not call for**

*meticulous examination of the materials collected during investigations (as held in Union of India v Rattan Malik) Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of his case, the appellant deserves to be enlarged on bail.*

On perusal of the aforesaid judgment it makes it clear that the scope of jurisdiction at the stage of the final determination of the guilt is different from the scope of jurisdiction at the stage of bail . The petitioner is in custody since January 2025 and the last bail application was rejected on June 2025. The speedy trial is an important facet of fundamental trial. The Supreme Court in the case of **Union of India vs. K.A. Najeeb reported in (2021)3 SCC 713** inter alia held that even in cases under Unlawful Activities Prevention Act (UAPA) the jurisdiction of the Constitutional Court shall not be ousted to grant bail on grounds of violation of Part III of the Constitution which covers within this protective ambit not only due procedure and fairness but also access to justice and speedy trial. In the present case as apparent from the record CW 2, CW3

and CW4 have already been examined and have not supported the case of the prosecution.

The Court at this stage cannot meticulously examine the prosecution evidence. The Court has to see only the prima facie case. It is a settled proposition that the petitioners cannot be kept in custody during the course of the trial as a punitive measure. There is nothing on the record to suggest that there is any other criminal antecedents or any other case of the similar nature is pending against the petitioners.

In case of petitioner Rejaul Ashik in CRM (NDPS) 676 of 2025 it has been stated fairly by the learned counsel for the State no recovery was effected from this petitioner and CW 2, CW 3 and CW 4 was the witnesses of recovery. It is pertinent to mention that at the time of rejection of first bail application, investigation was in progress, and after rejection of 2<sup>nd</sup> bail application three material witnesses of recovery have been examined. Thus there is drastic change in circumstances.

Thus taking into the facts and circumstances of the case, the petitioner, viz. Rejaul Ashik is released on bail of Rs. 20,000/- with two sureties of the like amount, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 1<sup>st</sup> Court (NDPS) Cooch Behar, subject to the condition that the petitioner shall appear before the learned Trial Court even every date of hearing

until further orders. The petitioner shall not threaten, tamper or intimidate the complainant or members of the family in any manner or whatsoever commit similar offence in future. The petitioner shall not leave to the jurisdiction of the learned Trial Court until further orders. In case the petitioner violates any such condition the prosecution is at liberty to move an application for cancellation of bail.

The application for bail is allowed.

C.R.M. (NDPS) 676 of 2025 stands disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all usual requisite formalities.

**(Dinesh Kumar Sharma, J.)**