

Order No. 10 dt. 10.6.24

Today is fixed for production, appearance and bail hearing.

Accused persons in custody namely Rejjak Ali and Arshad Ali are produced from J.C. today. I.O.'s report is not found filed. Let the accused person be now remanded back to J.C. till the next date. The other accused persons on court bail namely Baijur Rahaman and Anichur Rahaman are present and have filed hazira.

The record is now taken up for hearing of the bail petition filed on behalf of the accused persons in custody on the last date.

Ld. Advocate on behalf of the accused persons moved the bail petition and submitted that the petitioner is innocent who has been falsely implicated in this case and that compliance under Article 22 of the Indian Constitution has not been made in as much as the grounds of arrest of the accused person has not been communicated to them at the time of his arrest. He submitted that as the grounds of arrest has not been communicated to the accused, their arrest and subsequent remand has become illegal due to which alone they are entitled to be released on bail immediately. Ld Advocate for the accused drew the attention of this court to the judgement passed by Hon'ble Supreme Court of India in *Criminal Appeal 2577 of 2024 in Prabir Purkayastha Vs State (NCT of Delhi)* and prayed for release of the accused petitioner on bail under any terms and conditions.

Ld. P.P. in-charge for the State raised objection against the prayer for bail submitting therein that the present accused petitioners were prima facie found to be in possession of commercial quantity of Ganja on the relevant date and time. He however, agreed that the grounds of arrest were not communicated to the arrestees at the time of their arrest in this case.

Heard both the sides. Perused the bail petition and materials in the CD. Considered.

I have perused the record and materials in the C.D carefully. It appears from the perusal of the C.D. that the grounds of arrest were not communicated to the accused persons either orally or in writing at the time of arrest of the accused petitioners and as such there is clear violation of Art. 22 of the Indian Constitution and section 50(1) of the Cr.P.C. which failure of the arresting police officer, in turn also

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hits Art. 21. The accused petitioners are found to be in incarceration for about four months with the charge sheet yet to be filed against them. On query, Ld. P.P. in-Charge stated that there are no materials in the C.D. from which it could be gauged that the accused persons are habitual offenders of similar offences or that they have criminal antecedents. Considering the above facts and circumstances and considering the mandate of the Apex Court given in the above referred judgement, this Court is of the opinion that the accused petitioners are able to rebut the statutory limitations on grant of bail given in sec. 37(1)(b)(ii) of The NDPS Act and hence their bail petition is hereby considered and allowed on this day. Accused **Rejjak Ali and Arshad Ali** may be enlarged on bail on each furnishing bond of Rs. 20,000/- (twenty thousand) with two sureties of Rs. 10000/- (ten thousand) each, **one of whom must be a local surety who shall file fixed deposit certificate of any Bank of the required value before this court.** The registered surety shall be to the satisfaction of Ld. CJM., Cooch Behar. The bail is given with condition that the petitioner shall not try to intimidate/influence any of the witnesses of this case or tamper with the evidence in any manner and shall not commit offence on bail. Further, the accused persons **shall meet the I.O. of this case once a week until further order for giving their cooperation to the investigation of this case.** The bail prayer is thus disposed of.

To 15.7.24 for production/appearance, if on bail and I.O.'s report.

Dictated & corrected by

Sd/-

Addl. Sessions Judge, 1st Court,
Cooch Behar (NDPS)

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