

**IN THE COURT OF THE JUDGE, SPECIAL COURT UNDER NDPS ACT-
CUM- ADDL. DISTRICT AND SESSIONS JUDGE,
3rd COURT, HOWRAH.**

**J.O. Code WB00885
T. R. Case No. 43 of 2023**

Ref : NCB Crime No. 30/NCB/KOL/2023, dated 13-12-2023, U/s 20(b)(ii)(C)/29 of N.D.P.S Act.

STATE

Vs.

- 1) Sunder Deep**
- 2) Rakesh Sarkar**
- 3) Asha Malakar**
- 4) Prabha Mandal**

Order No. 01 dated 13-12-2023.

Four accused persons, namely **1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal** have been brought under arrested by the NCB, KZU and produced before the court.

The accused persons are taken into custody.

Received the complaint, search-cum-seizure list, inventory list, memo of arrests (4), medical papers and forwarding report.

The IO files a prayer for police remand of the four accused persons, namely 1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal.

Perused.

The accused persons submit before the court that they do not any private counsel and on being asked whether they want an advocate from the panel of D.L.S.A Howrah to be engaged on their behalf, they raise no objection.

Ld. Advocate Tandra Ghatak Das is present in the court room and appointed as an Advocate in this case to represent the accused persons, namely 1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal.

Subsequently, one bail petition has been filed on behalf of the all accused persons.

Perused the bail prayer as well as other materials on record.

Heard the Ld. Counsel for the accused persons as well as Ld. Counsel for the prosecution.

The Ld. Defence Counsel submits before the court that the accused persons are innocent and have been falsely implicated.

The Ld. Counsel for the prosecution has opposed the prayer for bail contending inter alia that 31.880 kgs of ganja was recovered from the possession of the said accused persons.

31.880 kgs of ganja was purportedly recovered from the possession of the accused persons and the CD reveals that there is scope for recovery of further contraband. Considering the incriminating materials in the CD, coupled with the implication of section 37 of the NDPS Act, the prayer for bail of accused persons, 1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal is considered and rejected.

Perused the prayer of IO with recommendation of Assistant Director, NCB, KZU, who prays for allowing two (02) days police remand of the four accused persons, namely 1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal.

Ld. P.P. In-Charge is present.

CD is produced. IO is present. Heard the I/O.

Perused the CD and the forwarding report duly forwarded by the Assistant Director, NCB, KZU The prayer for PC for two (02) days is for the recovery of more ganja and arrest of other associates which appears from the statement of the accused persons in CD that the accused persons will assist the police in recovering more ganja and arrest of their other associates of racket.

It is manifest from the CD that 31.880 kgs of ganja has been recovered from the possession of the accused persons. The investigation agency believes that further recovery can be made on the basis of disclosure made by the accused persons before the police.

Considering the materials available in the CD and submission of the I/O, I am of the view that prayer for PC can be allowed for 2 (two) days only.

Hence, the prayer for PC for 2 (two) days is allowed against the accused persons, namely 1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal.

The IO is directed to ensure that utmost care and caution be taken so that the accused persons, 1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal are not man-handled in any manner whatsoever and to provide him with all possible medical assistance if needed, during the period of police remand. The accused persons must be taken for medical check up on each day during police remand.

The IO is further directed to observe strictly the guidelines set out by our Hon'ble Apex Court in this regard in D. K. Basu Case.

Inform the IO.

To **15-12-2023** for production of accused persons, 1) Sunder Deep, 2) Rakesh Sarkar, 3) Asha Malakar and 4) Prabha Mandal positively at 10.30 AM with report.

Return CD to the IO.

Let a copy of this order be forwarded to the Assistant Director, NCB, KZU and the I/O of this case for information and taking necessary action.

Let a copy of order be sent to the Secretary, DLSA, Howrah for ratification of the appointment of Tandra Ghatak Das, Deputy Chief Defense Counsel, Howrah.

A petition filed by Sanjit Kumar, Intelligence Officer, NCB, KZU, on 13-12-2023 for certification of correctness of inventory under Sec. 52A(2) of the N.D.P.S. Act, 1985 (as amended). The record is taken up for passing order.

Perused the petition along with the materials on record. Considered.

In the case of Union of India (UOI) Vs. Mohanlal and Another (Criminal Appeal No. 652 of 2012) of the Hon'ble Apex Court has been pleased to consider the Standing Order No. 1/89 and to direct collection of information from the police heads of each State on the aspects of seizure, disposal, etc. of Narcotic Drugs and Psychotropic Substances. All narcotic drugs and psychotropic substances have been identified by the Central Government under sub-section (2) of Sec. 52 A of the Act as vulnerable to theft and substitution vide their G.S.R. 339(E) dated 10th May, 2007, published in the Gazette of India, Extra, Pt. II, Sec. 3(i) dated 11th May, 2007, vide G.S.R 38(E), dated 16th January, 2015, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section-(i), dated 16th January, 2015.

In view of the provisions of Sec. 60 of the N.D.P.S. Act the seized Narcotic Drug is liable for confiscation. Thus, certification of correctness of inventory, photographs, taking of photographs of the drugs and substances and drawing of representative sample in presence of the Id. Magistrate is necessary. So, the application under Sec. 52A(2) of the N.D.P.S. Act should be allowed. Hence the application under Sec. 52A(2) of the N.D.P.S. Act filed by Sanjit Kumar, Intelligence Officer, NCB, KZU is hereby allowed. Accordingly, I request Ld. Judicial Magistrate, 2nd Court Howrah to:-

- a) **Certify the correctness of the inventory.**
- b) **Permit taking, in his presence, photographs of the drugs and substances mentioned in the inventory and certify such photographs are true; and**
- c) **Allow drawing of representative samples in his presence and to certify the correctness of the list of samples so drawn.**

Sanjit Kumar, Intelligence Officer, NCB, KZU will produce the seized contraband articles, i.e. **31.880 of ganja** along with a copy of the inventory of the seized article, prepared by him on the date to be fixed and at the venue to be fixed by the said Ld. Judicial Magistrate First Class.

Let a copy of this order be sent to 1) Ld. Judicial Magistrate, 2nd Court Howrah for performing the above function and to 2) Sanjit Kumar, Intelligence Officer, NCB, KZU for his information and taking necessary action.

Fix 20-12-2023 for report.

D/C by me

Special Judge

**Judge, under N.D.P.S Act-cum-
Additional Sessions Judge,
3rd Court, Howrah.**