

**N.D.P.S. Case No. 88/2024.**

Order No.21 dated 26.03.2025.

Today is fixed for production/appearance of the accused persons and hearing on the application of extension of time limit for investigation and submission of final report preferred on behalf of the prosecution dt. 19.03.25.

The accused persons namely Md. Abdul Halim @ Bhola, Md. Khabiruddin Sk. @ Pukon and Nursad Ali @ Bishu are physically produced from J./C.

One accused person namely Kalu Sk. @ Kuran is on C. B. He is absent by petition.

Ld. PP in-charge and the Ld. Advocates for the Defence are present.

I.O. is also present with CD.

Two separate bail applications on behalf of the accused **Nurshed Ali @ Bishu and Abdul Hakim @ Bhola** have also been moved by the Ld. Counsel for the respective petitioners/accused persons. Copy served.

The petition dated 19.03.25 filed by the I.O. through Ld. Public Prosecutor praying for extension of time of investigation beyond 180 days which expires on 24.03.25 and the bail applications preferred by the accused persons as named above are taken up for hearing together.

During advancement of argument, Ld. P.P. in-charge submits that in this case 485 grams & 529 grams of Heroin-like substance were recovered and certification of correctness of inventory of seized contraband substance has already been done before the Ld. Judicial Magistrate, Lalbagh, Murshidabad. Thereafter samples were collected and sample 'E1' was sent to CFSL, Kolkata. The I.O. collected one expert opinion report from the CFSL, Kolkata on 07.03.25 and in the said chemical examination report it is found that the Director, CFSL, Kolkata opined that sample 'E1' does not contain Narcotic Substance. Thereafter as per the prayer of the I.O. dt. 18.03.25 allowed by this court on 18.03.2025 vide Order No. 19, sample 'E2' has been sent by the I.O. of this case to CFSL, Kolkata for further chemical examination and the said chemical examination report in respect of sample 'E2' of this case is yet to be received. Hence, he prays for allowing the prayer of the I.O. for another two months' time to conclude the investigation of this case.

It is further submitted that investigation in the instant case is yet to be completed and during such conflict of getting negative result of sample 'E1', retesting of another sample was requirement in the progress of investigation and collection of evidence in the instance case. He further submits that if the sample 'E1' was found negative with respect to presence of narcotic and psychotropic substance, that does not give a ground of bail to the accused. In support of his

contention, he has referred decision reported in the matter of **NCB Vs. Raju @ Natarajan [(2006) 3 SCC CrI. 372]**. In this connection he has informed this court that investigation in this case is in progress and the statutory period for filing charge sheet by the I.O. was not yet over when the prayer for extension beyond 180 days was preferred before this court. In this connection he has further contended that the application for extension of period of investigation was preferred by the I.O. of this case on 18.03.25, well in advance before the expiry of the statutory period of 180 days on 24.03.25. He has also informed this court that the said application for extension of period of investigation was preferred in accordance with law accompanying a report submitted by him and copy of the same was served upon the Ld. Defence Counsel representing the accused persons in this case. He has further contended that it was in that background, the Ld. Court fixed the matter for hearing in presence of the accused persons as per the mandate of Section 37-A (4) of the NDPS Act.

He has also informed this court that the I.O. immediately approached to this Ld. Court on 18.03.2025 with a prayer for sending another sample 'E2' of the contraband substance, so seized by him, for retesting within 15 days from the receipt of the said report which was found negative and the Ld. Court was pleased to allow the prayer of the I.O. after objective satisfaction and taking into consideration the statutory provisions as contained under the NDPS Act as well as the guidelines as laid down by the Hon'ble Apex Court in the matter of *Thana Singh Vs. Central Bureau of Narcotics* [reported in(2013) 2 SCC 590].

Ld. P.P. in-charge has also apprised this Court that I.O. has already sent the sample 'E2' to CFSL, Kolkata in compliance of the order of the Ld. Court which speaks for itself that there is substantial progress in investigation and the petitioner does not get indefeasible right to get bail on the sole ground that one of the samples of the seized contraband substance was found negative by the FSL, as contended by the Ld. Advocate for the petitioner/accused persons. In this connection, he has contended that I.O. has every right to send the second sample (E2), which was seized, packed and labelled, being part of the mother contraband substance (E) at the same time, if one sample was found negative to remove any further doubt regarding the nature of seized contraband substance in the instant case. He has also apprised this court that an application for extension of period of investigation was filed by the I.O. of this case in accordance with the provisions as contained u/S. 36-A (4) of the NDPS Act after complying the necessary conditions contained therein.

In this background, Ld. P.P. in-charge has prayed before this court to extend the period of investigation for a further period of two months beyond the period of 180 days as prayed by the I.O. of this case. Ld. P.P. in-charge has also prayed before the court not to allow the instant bail application moved by the petitioners/accused persons contending that the second sample (E2) has already

been sent for re-testing in terms of the order of this court pending which the bail prayer may kindly be rejected keeping in view the bar as contemplated u/S. 37 of the NDPS Act.

Per contra, the Ld. Defence Counsel submits that extension of further period of investigation may not be allowed by this Ld. Court in a routine manner. He further submits that further investigation may go up to one year if the following conditions are satisfied namely: -

1) a report of the public prosecutor indicating the progress of investigation,

2) the compelling reason for seeking the detention of the accused beyond the period of 180 days and

3) after notice to the accused.

In support of his contention, he has relied upon the Judgment passed by the Hon'ble Apex Court in the matter of **Sanjay Kr. Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and Anr.** [ reported in (2009) 17 SCC 631] and the Judgment passed by the Hon'ble High Court, Calcutta in the matter of **Subhas Yadav Vs. State of West Bengal** [ reported in ( 2023 SCC On Line Cal 313).

Relying upon the aforesaid solemn Judgments of the Hon'ble Apex Court and Hon'ble High Court, Calcutta, Ld. Defence Counsel further submits that no such condition is satisfied by the prosecution agency and accordingly the extension of the period of investigation deserves to be out-rightly rejected.

In this background he has prayed before this court to reject the prayer of the I.O. and not to extend the period of investigation beyond the statutory period of 180 days. Ld. Defence Counsel/s further pray/s for bail of both the petitioner/accused persons, Nurshad Ali @ Bishu and Abdul Hakim @ Bhola considering the CFSL report with respect to sample 'E1' which could not find any contraband/narcotic substance in the sample after testing.

Heard the rival submissions at the Bar.

Perused the CD and other available materials on record.

I also perused the Judgments relied upon the Ld. Public Prosecutor as well as Ld. Defence Counsel as cited above.

Considered.

Having heard the submissions of both the sides and going through the materials on record including the CD and report of Ld. P.P., it appears that the instant case was started out of a complaint lodged by SI Kalyan Sadhan Singha, of Lalgola PS to the effect that on 24.09.24 he along with force were engaged to perform special RT mobile duty vide Lalgola PS GDE No. 1410 dated 24.09.24 and on the said date at about 21.15 hours the then OC, Lalgola PS received an information regarding smuggling activity with a huge quantity of drugs like

Heroin throughout Jasaitala to Asaradaha ghat area under Lalgola PS, Dist. Murshidabad. After receiving the said information and as per direction of the then OC, Lalgola PS, he acted upon the said source information and reached at the place of occurrence along with force and surrounded the area of Airmari village and managed to apprehend the accused person, namely Abdul Hakim @ Bholu and Nurshad Ali and the apprehended accused person Abdul Hakim disclosed that he was going to deliver contraband substance to one Kalu Sk., son of Yunis Sk. of Airmari, Kanahpara, PS. Lalgola, Dist. Murshidabad in lieu of money @ Rs. 1,70,000 per 100 grams. It also transpires from the CD that in this case 485 grams & 529 grams of Heroin-like substance were recovered and certification of correctness of inventory of seized contraband substance has already been done before the Ld. Judicial Magistrate, Lalbagh, Murshidabad. Thereafter samples so collected were sent to CFSL, Kolkata including sample 'E1'. The I.O. collected one expert opinion report from the CFSL, Kolkata on 07.03.25 and in the said chemical examination report it is found that the Director, CFSL, Kolkata opined that sample 'E1' does not contain narcotic substance. Thereafter as per the prayer of the I.O., allowed by this court on 18.03.2025 vide Order No. 19, sample 'E2' has been sent by the I.O. of this case to CFSL, Kolkata for testing of the contraband substance and the said chemical examination report in respect of sample 'E2' of this case is yet to be received by the I.O.

It also transpires from perusal of CD of this case that the investigating agency had sent three samples marked as A1, C1 and E1 to CFSL, Kolkata on 25.09.24 and the opinion regarding those samples was received by the I.O. on 07.03.25. From the chemical examination report with respect to the said samples, I do find that sample C1 was partly tested positive with Morphine and Codeine being the narcotic substance covered under the NDPS Act.

I also do find substance in the submission advanced by the Ld. P.P. in-charge wherein he has contended that I.O. has every right to send the second sample (E2) to the Forensic Laboratory, if one sample (E1) was found negative to dispel/remove any further doubt regarding the nature of seized contraband substance in the instance case since both sample (E1 and E2) was seized, packed and labelled being part of the mother contraband substance 'E' at the same time.

I also do find no lacuna on the part of the prosecution agency for collection of chemical examination report. It is not the case as alleged by the defence, that there has been much delay and negligence from the I.O. to get chemical examination report. But it appears that the test report received from the chemical laboratory by police was in conflict with the spot test made by the police in respect of the alleged contraband substance. Thus, for collection of further evidence, I.O. had prayed for retesting of sample 'E2' which was very

much essential considering the factual matrix of the instant case and it also covers the progress of investigation in this case.

I have also perused the solemn Judgments relied upon by the Ld. Defence Counsel in the matter of Sanjay Kr. Kedia (Supra) and I do find that the facts and circumstances of this case are distinct from that case. I also do find that the condition as contained u/S. 36 -A (4) of the NDPS Act have been satisfied in the instant case as per the Judgment in Sanjay Kr. Kedia (Supra) and Subhas Yadav (Supra) as relied upon by the Ld. Defence Counsel during his advancement of argument.

In light of the above discussion, I am of the considered opinion that the period of investigation may be extended. Thus, I am inclined to allow the prayer for extending the period of investigation for sixty (60) days beyond the period exceeding 180 days. I.O. is directed to complete the investigation on or before 23.05.25.

Fix 23.05.2025 for final report.

In view of the aforesaid facts and circumstances as discussed above, I am also of the considered opinion that the statutory bar as contained u/S. 37 of the NDPS Act in the matter of grant of bail is very much applicable in the instant case in the light of the fact that part sample of 'C1' was tested positive with Morphine and Codeine being the narcotic substance, covered under the NDPS Act. Hence, I am not inclined to allow the prayer for bail of the present petitioners. Thus, the petition for bail preferred by the accused persons, namely Nurshad Ali @ Bishu and Abdul Hakim @ Bhola, stands rejected.

All the petition are thus disposed of.

Return CD.

To 05.04.2025 for production/appearance of the accused persons.

Let a copy of this order be sent to I.O. for taking necessary action.

Dictated & corrected by me,

Judge.  
(J.O. Code WB 01303)

ADJ, 2<sup>nd</sup> Court, Cum,  
Judge, Special Court, Under N.D.P.S. Act,  
Berhampore, Murshidabad.  
(J.O. Code WB 01303)