

**IN THE COURT OF THE JUDGE, SPECIAL COURT, ADJ 3RD COURT,
MALDA .**

Special Case No. 09 /2024

Ref:-Baishnabnagar P.S. Case No.37/2024 dated 11.01.2024 u/s-21(c)/29 of NDPS Act.

Present :-Smt. Sanghamitra Podder
J.O. Code-WB00855
Judge, Special Court,
ADJ 3rd Court, Malda.

State Vs. Amirul Islam & Azizur Sk. @ Aziz

Order No.01
11.01.2024

Two accused persons, namely, Amirul Islam & Azizur Sk. @ Aziz have been brought under arrest and produced before this Court. They are taken into custody and remanded to J.C.

Perused the forwarding report, memo of arrests, inspection memos, accused challans, seizure list, medical slips, Formal F.I.R., written complaint, notices and carbon copy of labels of Baishnabnagar P.S. Case No.37/2024 dated 11.01.2024 u/s-21(c)/29 of NDPS Act.

Registered the case as Special (NDPS) Case.

Seized Alamats marked as Exbt.-A, Exbt.-B, Exbt.-C and Exbt.-D stated to have contained narcotic substances are produced.

I.O. has prayed for P.C. of both the accused persons for 14 days.

Ld. Spl. P. P. is present.

The I.O. S.I. Ram Chandra Saha of Kumbhipara O.P. under Baishnabnagar P.S. is present along with Case Diary.

Bail petition along with vokalatnama are filed on behalf of the accused person.

Ld. Defence Counsel submits that as recovery has been completed the accused person should be enlarged on bail rejecting the P.C. prayer.

Ld. P.P. raises strong objection submitting that to arrest the associates and identify the entire racket involved in this case P.C. for 14 days should be allowed rejecting the prayer of bail.

Heard the I.O. S.I. Ram Chandra Saha who submits that he has failed to produce the Pen Drive in which the videography of search and seizure process was recorded and prays for apology.

Heard the I.O., Ld. P.P., Ld. Defence Counsel and the accused persons in person on the prayer of the I.O. for 14 days police custody as well as the prayer of bail.

Perused the case record, case diary and P.C. prayer of the I.O. Considered.

On careful scrutiny of the P.C. prayer forwarded by SDPO, Kaliachak, it is found that the I.O. has prayed for P.C. for recovery of brown sugar as confessed by

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the accused persons during their interrogation and arrest of other involved accused persons. On careful scrutiny of the written complaint it is found that the de-facto complainant S.I. Yang Tshering Tamang has brought allegation that he caught the accused persons red handed with Phensedyl bottles. Nowhere in the written complaint nor in the statement of the accused persons recorded u/s-161 Cr.P.C. allegation of narcotic substances in the form of brown sugar is found but the I.O. has prayed for P.C. for recovering brown sugar which he failed to explain before this Court during hearing of P.C. prayer. Moreover, I.O. has also admitted that he has failed to produce the prima facie evidence that the entire process of search and seizure was videographed and seizure list as per mandate of **Hon'ble Apex Court laid down in Shafhi Mohammad Vs. State of Himachal Pradesh decided on 30.01.2018** and mandate of **Hon'ble High Court, Calcutta as laid down in Ishdan Seikh Vs. Union of India decided on 06.05.2022**. Prayer of P.C. cannot be allowed mechanically. Considering the facts and circumstances as discussed above, I am not inclined to allow the prayer of P.C. at this stage.

As commercial quantity of Narcotic and Phycotropic substances (Phensedyle) has been recovered from the possession of the accused persons and investigation is at very early stage, considering the nature and gravity of the offence, I am inclined to reject the prayer of bail.

Fix 25.01.2024 for production of accused persons from J.C. and report of I.O.

C.D. be returned.

Dictd. & corrted. by me

*Judge, Special Court,
ADJ 3rd Court, Malda.*

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