

NDPS Case No. 33 of 2025
CNR No. WBUD01-002223-2025
Under Section 21(c)/29 NDPS Act
State Versus Abdul Malek (A1), Setabur (A2) & Jaharul Islam (A3)

Order No. 15
18.02.2026

- 1) The matter stands listed this day for the production of the accused persons and for submission of expert report.
- 2) Accused persons A1 to A3 have been produced through virtual mode and are duly represented by their respective Learned Advocates.
- 3) No report from expert is received.
- 4) The Learned Public Prosecutor-in-Charge is present and in attendance before the Court.
- 5) Two separate applications for bail are filed on behalf of accused A1 & A3 (by Mr. Bidhan Chandra Modak, Learned Lawyer).
- 6) Copy served. Objection noted.
- 7) The plank upon which the prayer for bail, so far as accused A1 and A3 are concerned, has been rested is the period of judicial custody already undergone by them, coupled with the assertion that no incriminating article was recovered from A3 and that the investigation remains incomplete.
- 8) Mr. Ashis Sarkar, Learned Senior Counsel appearing on behalf of accused A3, has with marked insistence contended that his client merits enlargement on bail, principally on the grounds that no final report has yet been submitted and that no recovery has been effected from his client's possession.
- 9) The Learned Public Prosecutor-in-Charge has opposed the prayer with considerable earnestness and restrained yet firm vehemence.
- 10) It has been pointed out that, apart from the recovery of more than 300 grams of heroin from accused A1 and A2, a further quantity exceeding 300 grams of heroin was also recovered from accused A3 on 12.11.2025.
- 11) The record reveals that charge-sheet has already been submitted in the case, though the expert opinion in respect of the samples drawn from the contraband allegedly recovered from accused A3 is still awaited.
- 12) In such backdrop, the submission advanced on behalf of accused A3 by Mr. Sarkar, as noted hereinbefore, appears to have stemmed from an imperfect perusal of the case record, a circumstance rather incongruous with the stature expected of Learned Senior Counsel.
- 13) Furthermore, it transpires that Mr. Bidhan Chandra Modak, who has also moved the prayer for bail on behalf of accused A3, does not possess any vakalatnama duly executed in his favour by the said accused.
- 14) Be that as it may, mere efflux of time in detention, standing alone, cannot be exalted into a determinative ground for grant of bail, particularly in a prosecution bearing the present degree of gravity.
- 15) It scarcely admits of reiteration that the menace of narcotic trafficking casts a profound and often irreparable shadow upon the social and moral fabric of the community.
- 16) Thus, while adjudicating the present prayer, this Court is obliged not only to remain guided by the ordinary parameters governing the exercise of bail jurisdiction, but also to stay acutely mindful of the statutory restraints engrafted under clause (b) of sub-section (1) of Section 37.
- 17) The legislative mandate embodied in Section 37(1) postulates, firstly, that the Public Prosecutor must be afforded an opportunity to oppose the prayer for release, and secondly, where such opposition is forthcoming, the Court must reach satisfaction that reasonable grounds exist for believing that the accused is not guilty of the alleged offence, together with the further assurance that he is unlikely to commit any offence while on bail.
- 18)
- 19) The expression "reasonable grounds" has come up for discussion various judgments of Hon'ble Apex Court, a landmark of which was reported in *Collector of Customs, New Delhi Versus Ahmadalieva Nodira*¹.

¹ 2004 (3) SCC 549

- 20) It is by now well settled that the expression “reasonable grounds” in clause (b) of sub-section (1) of Section 37 of the NDPS Act signifies the presence of credible and persuasive material enabling the Court to form a prima facie belief that the accused is not guilty of the alleged offence. Such satisfaction must arise from concrete facts and circumstances, coupled with a further assurance that the accused is unlikely to commit any offence while on bail. (See- NCB Versus Mohit Aggarwal²)
- 21) Nothing has been brought on record which may, even prima facie, dilute or displace the statutory embargo engrafted under Section 37 of the NDPS Act.
- 22) For the reasons recorded hereinabove, the prayer for bail stands rejected.
- 23) The Investigating Officer is directed to secure the expert opinion in respect of the samples drawn from the mother exhibit allegedly recovered from accused A3 and to submit a supplementary report on or before the date so fixed.
- 24) The Director, State Drug Research & Control Laboratory, Kolkata, is earnestly requested to hand over the examination report relating to the samples drawn from the articles seized on 12.11.2025 to the person duly deputed or authorised by the Inspector-in-Charge of Goalpokher Police Station, forthwith upon completion of such analysis.
- 25) The accused persons are remanded to judicial custody until 06.03.2026, the intervening period from 28.02.2026 to 04.03.2026 being holidays.
- 26) Let a copy of this order be transmitted to the Investigating Officer of the case as well as to the Director, State Drug Research & Control Laboratory, Kolkata, for kind information and necessary compliance.
- 27) Mr. Modak is to file *vokalatnama* duly executed by accused A3 in his favour on the date fixed.

Dictd. & Cortd.

Judge, Spl. Court (NDPS Act).
Raiganj, Uttar Dinajpur.

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