

17.03.2026

DL-44
Court No.7

[Bench ID-1592]

(AD)

Calcutta High Court

*In The Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction
Appellate Side*

CRM (NDPS) 53 of 2026

In re : An Application for Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 in connection with **CR (NDPS) Case No.67 of 2025** arising out of **Matigara** Police Station Case No. **324 of 2025** dated **20.05.2025** under Sections **21(c)/25** of the Narcotic Drugs and Psychotropic Substances Act, 1985.

-And-

In the matter of : Abdul Rauf MominPetitioner

Mr. Hillol Saha Podder, Advocate

... .. For the Petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP

Mr. Ujjwal Luksom, Advocate

Mr. Aniruddha Biswas, Advocate

... ..For the State

1. Application for grant of bail was taken up for consideration on March 16, 2026. Petitioner claimed parity with the co-accused who was enlarged on bail by the order dated December 17, 2025 in CRM (NDPS) 371 of 2025.
2. Co-accused contended gross violation of the provision of Section 42 of the NDPS Act, 1985. Considering the materials in the case diary and proposition of law as enunciated in the authorities of the Hon'ble Supreme Court cited before it, Co-ordinate Bench granted bail to the co-accused in CRM (NDPS) 371 of 2025.
3. The case diary produced in Court on March 16, 2026 contained compliance with Section 42 of the Act of 1985.

Noticing such fact, Court called upon the learned Advocate for the State to assist the Court as to how in the earlier Bail application State allowed the contention of non-compliance with Section 42 of the Act of 1985 to remain unchallenged. Court also called upon the learned Advocate for the State appearing in CRM (NDPS) 371 of 2025 for assistance.

4. Learned Advocates appearing for the State took adjournment for better assistance, which was granted on March 16, 2026.
5. Today, both learned Advocates for the State who appeared in the bail of the co-accused being CRM (NDPS) 371 of 2025 and the learned Advocate for the State engaged in this Bail application appears.
6. Learned Advocate appearing for the State who appeared in CRM (NDPS) 371 of 2025 submits that, the Investigating Officer did not produce the original case diary to him when, the Coordinate Bench considered such bail application. He submits that, such case diary did not contain the compliance of Section 42 of the Act of 1985. He looked into the case diary now in Court and submits that the materials in the case diary were not made available to him by way of the case diary produced in respect of CRM (NDPS) 371 of 2025. He submits that, he recommended filing an application for cancellation of bail in respect of CRM (NDPS) 371 of 2025.
7. Today, learned Advocate appearing for the petitioner seeks leave to not press the application for bail. Yesterday, the learned Advocate for the petitioner insisted on the grant of

bail on the ground of parity with the co-accused of CRM (NDPS) 371 of 2025.

8. Today, across the Bar there is a consensus that the contention of non-compliance with Section 42 of the Act of 1985 is without substance in respect of the present police case.
9. Principally the ground for grant of Bail is that the grounds of arrest were not made known to the arrestee. It is the most common ground across a majority of the applications for grant of bail.
10. Non-communication of the grounds of arrest to the arrestee is serious breach of the fundamental rights guaranteed by the Constitution. Police cannot arrest a person without the due process of law and without a just cause. Due process to arrest would involve communicating the grounds of arrest to the arrestee. Non-communication of the same initiated the arrest itself as non-infringement of the fundamental right.
11. A police personnel cannot be permitted to arrest any person without the due process of law. If in a given police case it is found by the Court granting bail that the police arrested an accused without communicating the grounds of arrest then such police personnel is guilty of dereliction of duty. Such dereliction of duty is of such gravity that the same must not escape the attention of the disciplinary authority of such police personnel.

12. In the facts and circumstances of this case two startling facts require the immediate attention of the Commissioner of Police, Siliguri Police Commissionerate. One is the finding of the Co-ordinate Bench in CRM (NDPS) 371 of 2025 of violation of Section 42 of the Act of 1985 and the other is the learned Advocate for State being made over a case diary therein as contended by him today. Both aspects are serious and require a robust investigation.
13. In view of the startling facts that are brought to the notice of the Court, it would be appropriate to direct the Commissioner of Police, Siliguri Police Commissionerate, North Bengal, since the concerned police station falls within his jurisdiction, to investigate into this matter. He is requested to fix responsibility as to how a case diary which was produced in Court through the learned Advocate for the State in CRM (NDPS) 371 of 2025 did not contain the relevant materials. He will undertake an audit of all matters in which bail was granted on the ground of alleged non-compliance of Section 42 of the Act of 1985 for the past one year within his jurisdiction. He will take steps as against the Investigating Officer and the person who arrested such accused in all those police cases, who were enlarged on bail for non-compliance of Section 42 of the Act of 1985, since it infringes a fundamental right of the citizen and sounds in dereliction of duty. In the event, he finds on such audit that bail was granted under Section 42 of the Act of 1985 although, due compliance was

there, he will seek explanation from every person interested and concerned with the matter as to why no application for cancellation of bail or a Special Leave Petition being carried against such order, as the case may be, was not filed.

14. So far as this matter is concerned to list on March 23, 2026 when the report limited to this matter be submitted.
15. In addition to the Commissioner of Police conducting such audit, the learned Legal Remembrancer will also undertake similar exercise in respect of all matters where bail was obtained under Section 42 of the Act of 1985, for the past one year, at least, and take suitable measures.
16. Learned Advocate for the State is requested to communicate this order to the concerned persons.

(Debangsu Basak, J.)