

25.03.2026
Item No.67
Court No.7
KB

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

C.R.M. (NDPS) 189 of 2026

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure corresponding to Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with **Mathabhanga** Police Station Case No. **168** of **2025** dated **08.03.2025**, under Sections **20(b)(ii)(c)/25/29** of the NDPS Act, 1985.

-And-

In the matter of : **Subhash Sarkar @ Subhash Sarkar**
...petitioner

Mr. Sandip Guha Roy, Advocate
...for the petitioner

Mr. Joyjit Choudhury, Ld. AAG
Mr. Aditi Shankar Chakraborty, Ld. APP
...for the State

1. Report called for by the order dated March 18, 2026 filed in Court be taken on record.
2. Inspector General of Police, North Bengal Region by the order dated March 23, 2026 states that, the case diary contains compliance with Section 42(2) of the NDPS Act, 1985. He states in his report that, the police is not accepting the order of the co-ordinate Bench dated March 18, 2026 with regard to the bail granted on the ground of non-compliance of Section 42 of the Act of 1985.
3. There are facts which are startling in this matter.
4. Initially, petition for bail was founded on the ground of parity in view of bail being granted by the co-ordinate

Bench to the co-accused, by the order dated February 19, 2026 passed in CRM (NDPS)/467/2025.

5. Relevant portion of the order dated February 19, 2026 passed by the co-ordinate Bench is as follows;

“Admittedly the provisions laid down under Section 42 of the Act have not been complied with by the arresting officer in violation of mandate laid down by the Hon’ble Supreme Court time and again. In view of the above, the petitioner is entitled to bail solely on such score despite the fact that narcotic substance of commercial quantity has been recovered from his possession.”

6. Foundational basis of such finding being returned by the co-ordinate Bench did not exist in the case diary. In fact, there is a writing dated March 8, 2025 of the Sub-Inspector of Police to the Sub-Divisional Police Officer, which, to my mind, is in terms of Section 42(2) of the Act of 1985.
7. In such circumstances, it would be appropriate to request the Inspector General of Police, North Bengal to undertake an exercise to identify the police cases for the past one year in which, the accused were granted bail on the ground of
- (i) alleged non-compliance of Section 42 of the Act of 1985 and
 - (ii) alleged non-communication of the grounds of arrest.
8. Inspector General of Police, North Bengal will initially confine his enquiry for the past one year. He is requested

to enlarge the scope of enquiry subsequent to such period on completion of the enquiry in relation to the past one year. He is requested to take suitable ameliorative steps with regard to the applications for grant of bail being filed on such grounds in Court. Wherever, he finds that, bail was granted on those grounds, and the police are not agreeing with the grounds of such bail on the basis of the materials in the case diary, he will ensure that either the police personnel concerned is adequately dealt with or appropriate steps are taken with regard to the order granting the bail.

9. Learned Legal Remembrancer is requested to undertake a similar exercise.
10. Learned Advocate for the State is requested to communicate this order to the relevant authorities forthwith.
11. Court requested the presence of the Learned Additional Advocate General in view of gravity of the situation. He is present.
12. Learned Additional Advocate General submits that his office will request the learned Legal Remembrancer for applying for cancellation of bail before the appropriate forum.
13. List the application for bail on March 27, 2026.

(Debangsu Basak, J.)