

27.07.2026
Item No.23
Court No.9
CHC
(Rejected)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

C.R.M. (NDPS) 374 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.115 of 2025 arising out of Phansidewa Police Station Case No. 402 of 2025 dated 06.09.2025 under Sections 20(b)(ii), 22(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of : **Dilip Biswas & Anr.**

..... petitioners

Ms. Rima Sarkar, Advocate
Ms. Sidhi Sethia, Advocate
Ms. Suparna Paul, Advocate

...for the petitioners

Mr. Avrojoyti Das, Ld. A.P.P.
Mr. Gobinda Ghosh, Advocate
Mr. Atul Dong, Advocate

...for the State

1. Prayer for bail of the petitioners is taken up for consideration.
2. It is submitted by the learned advocate for the petitioners that according to the case made out by the prosecution, contraband articles in the nature of Ganja is said to be recovered from the possession of the petitioners.
3. Learned advocate for the petitioners submits that articles were seized from the public vehicle. Petitioners happened to be the driver and cleaner of such vehicle. Since it was a public vehicle the petitioners were not aware of the transportation of such contraband articles and they

cannot be held. In support of such contention learned advocate for the petitioners relies upon **2026 SCC OnLine Cal 4607 (Saw Herald vs. State)**.

4. It is further submitted by learned advocate for the petitioners that according to the directions issued by the Hon'ble High Court by an order passed on June 22, 2022 in **CRM (NDPS) 492 of 2022 with CRM (NDPS) 493 of 2022** mandatory videography of search and seizure of contraband articles is required to be done. Learned advocate for the petitioners submits that such directions were not complied by the prosecution and, as such, the petitioners are entitled to bail.
5. Learned advocate for the petitioner also submits that there is a delay in sending the seized contraband to the Forensic Science Laboratory for its chemical examination. Learned advocate for the petitioners also submits that the petitioners have been in custody for more than 300 days. Learned advocate for the petitioner submits that on the ground of delay in sending the seized contraband to FSL, Hon'ble Supreme Court granted bail to the petitioners therein in terms of an order passed on February 9, 2026 in **Special Leave to Appeal (Crl.) No.7049/2025**.
6. Learned advocate for the petitioners prays for release of the petitioners on bail.
7. On the other hand, learned advocate for the State submits that 41.861 kgs of Ganja were recovered from the

possession of the petitioners. The petitioners were found in conscious possession of the aforesaid contraband articles. It is also submitted by learned advocate for the State that there is nothing on record to show that petitioners were driver and cleaner of the vehicle from where the seizure was made. Learned advocate for the State also submits that there has been substantial compliance of the direction issued in **CRM(NDPS) 492 of 2022**. Videography of search and seizure was made and videographer has been examined as a witness and his statement has been recorded under Section 161 of the Code of Criminal Procedure. Learned advocate for the State refers to such statement contained in the Case Diary.

8. As noted above, 41.861 Kgs of Ganga was recovered from the possession of the petitioners. The Case Diary contains the seizure list which goes to show that the narcotic contraband was recovered from the joint possession of the petitioners and another accused. The seizure list contains the signature of the petitioners.
9. In **Saw Herald** (supra) coordinate Bench of this Court held as follows:-

“10. None of the seized articles were recovered from the person of the petitioner. The alleged involvement of the petitioner was only in driving the car. Ex facie, there is no direct involvement of the petitioner. Although

the expression “possession” in respect of such offences may not be limited to recovery from the person of the accused, but at least it has to be established prima facie, for the rigours of Section 37 to apply, that the petitioner in some manner was in control of the seized material. Merely driving a car, while the recovery was made from the passenger, does not entail such a conclusion”.

10. In the case at hand, however, seizure list goes to show that, commercial quantity of contraband was recovered from the joint possession of the petitioners and one another accused.

11. In **Kalu Sk. @ Kuran** (supra) this Court issued certain directions. Learned advocate for the petitioners has relied upon directions (i), (ii) and (iii) which are as follows:-

(i) *In all cases involving recovery of narcotic substance particularly recovery of narcotic above commercial quantity, seizing officers shall make a video recording of the entire procedure unless for reasons beyond the control of seizing officers, they are unable to do so;*

(ii) *Reasons for failing to videograph the recovery proceeding must be specifically recorded in the investigation records particularly contemporaneous documents including seizure/inventory list;*

(iii) *Superior Police Officer not lower than the rank of Additional Superintendent of Police shall monitor recovery of narcotic substance above commercial quantity within their territorial jurisdiction and ensure due*

compliance of statutory provisions regarding search and seizure including compliance of the directives (i) and (ii) relating to videography of recovery and/or recording of adequate reasons for departure from such procedure;”

12. So far as video recording of search and seizure is concerned, materials in the Case Diary including the statement of the person who recorded video of search and seizure goes to show that the directions in para (i) of **Kalu Sk. @ Kuran** (supra) has duly been complied. The case Diary also contains the statement of the Inspector-in-Charge who acted as Gazetted Officer in terms of the provisions of the Act of 1985 at the time of search and seizure.
13. Therefore, it appears that there is substantive compliance of direction issued in **Kalu Sk. @ Kuran** (supra).
14. In **Special Leave to Appeal (Crl.) No.7049/2025** the Hon’ble Supreme Court noted that sample of the narcotic was sent to FSL after 21 days was not explained and in consideration of such non-explanation of delay in sending the materials to the FSL, the Hon’ble Supreme Court granted bail to the petitioners therein.
15. In the instant case, however, the petitioners have been in custody for over 300 days. It is informed that the investigation of the case has ended in a chargesheet. Charges are yet to be framed. On the basis of the materials in the Case Diary, I am not in a position to hold

that there is absolutely no explanation for delay of 9 days in sending the materials to the FSL for chemical examination.

16. Under the aforesaid facts and circumstances, I am not in a position to return a finding that the petitioners have been able to overcome the restrictions under Section 37 of the NDPS Act, 1985.

17. Consequently the prayer for bail of the petitioners is rejected.

18. CRM(NDPS) 374 of 2026 is **dismissed**.

(Md. Shabbar Rashidi, J.)