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10.09.2026
Ct. No. 10
Ashim
(Chamber)

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION**

CRM (NDPS) 384 of 2026

In Re : SASHI KAR @ SHASI KAR

.....Petitioner.

Adv. Joydip Biswas (V.C)
Adv. Amanul Islam
Adv. Anirban Banerjee
Adv. Bodhisotya Guha
Adv. Soumyajit Laskar

.... For the Petitioner.

Ld. APP Avrojoyti Das
Adv. Panchali Deb Sikder (Nag)
Adv. Rajyashree Ghosh

.....for the State

1. This is an application under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The petitioner is indicted under Section 20(b)(ii)(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 in connection with C.R.(NDPS) Case No. 148/2025 arising out of Pradhan Nagar, P.S. Case No.748 of 2025 dated 13/11/2025.

3. Mr. Biswas, the Learned Counsel for the petitioner firstly argued that Section 52A of the NDPS Act, 1985 has been flouted in this case. Inviting attention to the charge-sheet, Mr. Biswas submitted that inventory of the seized articles was on 13/11/2025 before the Judicial

Magistrate, 1st Court, Siliguri whereas the sample was sent on 17/11/2025 by the Additional Chief Judicial Magistrate, Siliguri. According to Mr. Biswas, this is a violation of mandatory statutory provision of Section 52A of the NDPS Act, 1985. Referring to a Division Bench Judgment of this Court in **Aizul Seikh & Anr. Vs. State of West Bengal [(2024) SCC OnLine Cal 6916]** it was submitted that as per Section 52A(2) of the NDPS Act, 1985 drawing of sample in presence of the Magistrate and due certification by him is a mandatory provision which cannot be whittled down. Presence of the Magistrate sanctifies the process of drawing sample. In this case, this Section 52A of the NDPS Act, 1985 was flouted and secondly it was sent by ACJM, Siliguri before whom the sampling was not done. Accordingly, he submitted, that the bail must be granted.

4. Mr. Das, the Learned Counsel appearing for the prosecution submitted that in **Narcotics Control Bureau Vs. Kashif [(2024) 11 SCC 372]** the Supreme Court of India observed that Section 52A(2) of the NDPS Act, 1985 lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would

neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

5. I have heard rival submissions.

6. Case Diary shows that samples had been taken in presence of the Judicial Magistrate, 1st Court, Siliguri. Videography was also done therein. After two days, Learned ACJM, Siliguri forwarded the sample for narcotic analysis. This itself does not show that provision of Section 52A of the NDPS Act, 1985 have been offended, in any manner, especially in respect of sampling and videography. In fact, photographs are available on record. Learned ACJM, Siliguri being the superior officer may forward the sample for forensic report analysis. Mere forwarding after two days is not a serious lapse. This was observed in Supreme Court of India in **Narcotics Control Bureau Vs. Kashif [(2024) 11 SCC 372]**. Even if, it is assumed that there is a delay that itself is an irregularity which does not entitle the present petitioner to any order of bail.

7. Contraband substances of commercial quantity have been recovered from the petitioner. The petitioner was arrested on 13/11/2025. It is not a case that the substantial period of detention has been undergone.

8. On perusal of Case Diary and other material and after hearing rival pleas, this Court is not inclined to allow bail and the same stands rejected.

9. Case Diary be returned.

10. The application for bail, being CRM (NDPS) 384 of 2026, is thus, dismissed.

11. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Sugato Majumdar, J.)