

22.12.2025
Item no. 36
Court No. 3
[Sayan]
(Bail **allowed**)

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction**

CRM (NDPS) 458 of 2025

In re : An Application for bail under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 in connection with CR (NDPS) Case
No. 22 of 2025 arising out of Pradhannagar Police Station, District-
Darjeeling Case No. 84/2025 dated 04.02.2025 under Sections
21(c)/22(c)/29 of NDPS Act.

-And-

In the matter of : Shiben Dastidar & Anr.

... .. Petitioner

Mr. Rajesh Kumar Sharma

Mr. Bickey Sharma

Mr. Rohan Nirovia

... .. For the Petitioner

Mr. Nilay Chakraborty, Ld. APP

Mr. Tapan Bhattacharjee

Mr. Dhiman Sil

... ..For the State

The petitioner's bail prayer is principally founded on
the ground that, constitutional provision as well as provision
under the NDPS Act have been violated and the tests as provided
under Section 37 of the said Act has not been complied with by
the prosecution.

Mr. Rajesh Kumar Sharma, learned advocate for the
petitioner has categorically submitted that, the petitioner has not
been provide with the grounds of his arrest which is a mandatory
condition in terms of the statute as well as the Constitution of
India. In this regard, Mr. Sharma has referred to the judgment of
the Supreme Court in ***Mihir Rajesh Shah Vs. State of***

Maharashtra reported in **2025 SCC OnLine SC 2356** as well as in **Prabir Purkayastha Vs. State (NCT of Delhi)** reported in **(2024) 8 SCC 254**.

Another judgment of the Division Bench of this Court in **Sanjay Kumar Vs. State of West Bengal** in **CRM 160 of 2021** dated **February 9, 2022** has been referred to in support of the submission that, the principles of res judicata would not be applicable in case of the petitioner's bail prayer.

So far as the point of res judicata is concerned, it has not been urged on behalf of the State in this case. Hence, the Court need not go into the same. Though for the sake of clarity, it can be mentioned that right of a person to pray for bail is co-extensive with right to personal liberty of him and indefeasible in nature. Renewal of such prayer on changed circumstance cannot be barred by applying any proposition of law. To be more precise, even adding up to the number of days of incarceration, may be treated by the Court as a changed circumstance on the perspective of particular factual background of a case.

So far as the due satisfaction of the yardstick provided under Section 37 of the NDPS Act by the prosecution in the instant case, the Court finds that, the ratio in the judgments as referred to above by the petitioner would be applicable in case of the present petitioner in so far as the record does not reveal about grounds of arrest having been duly made available to the petitioner as per requirement under the law. Therefore, following

the document of the Hon'ble Supreme Court in the judgments as above, the bail prayer of the petitioner is allowed.

The petitioner is granted bail upon furnishing a bond of Rs. 30,000/- with two sureties of like amount, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 2nd Court cum Special Judge under NDPS Act at Siliguri, District- Darjeeling, subject to the condition that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses nor tamper with evidence in any manner whatsoever.

(Rai Chattopadhyay, J.)