

24.12.2025
Item no. 22
Court No. 3
[Sayan]
(Bail **allowed**)

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction
CRM (NDPS) 469 of 2025**

In re : An Application for bail under Section 483 of the BNSS, 2023 corresponding to Section 439 of the Code of Criminal Procedure, 1973 in connection with Siliguri PS Case No. 1417 of 2020 dated 07.12.2020 u/s 20(b)(ii)(C) of the NDPS Act, 1985.

-And-

In the matter of : Habu Ghosh

... .. Petitioner

Mr. Pritam Roy

... .. *For the Petitioner*

Mr. Abhijit Sarkar

Mr. Chattu Roy

... ..*For the State*

Learned advocate for the petitioner has raised serious doubt as to the sample of contraband, report of which has been relied on by the prosecution in this case. He submits that, as per witness's statement, the sample produced in the Court has remained in an unaltered condition as the witness saw it before and hence he submits, that it is doubtful whether the contraband, chemical examination report of which has been relied on by the prosecution in this case, is at all related to the instant case or not. Thus, he has raised question as to the genuineness of seizure of the alleged contraband.

His second contention is with regard to violation of Section 42 of the NDPS Act that, the search and seizure has not been done in presence of any gazetted officer. In this regard, he has relied on relevant document annexed with this application. He has further relied on the deposition of the witnesses so far

examined in this case to submit that prosecution case is most likely to fail in the trial. Lastly, he has relied on the long detention of the petitioner.

A judgment of the Supreme Court in ***Yusuf @ Asif Vs. State*** dated **October 13, 2023** in ***Criminal Appeal No. 3191 of 2023*** has been relied on by the learned advocate for the petitioner, that the Supreme Court has held that in absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and seized article was certified by him, the same would not be a valid piece of primary evidence in the trial.

Objection of the State is basically on the ground that, trial has proceeded fairly well and at this stage, the petitioner may not be released.

The submission of the State is not on the basis of the quality of evidence. Otherwise, in view of the materials available in CD, the Court is satisfied about the grounds put forth by the petitioner regarding infractions as alleged. The Court is also conscious about the period of detention of the petitioner which is fairly long by this time. Therefore, since admittedly, the trial is still in progress and there is no imminent scope for conclusion of the same, lingering his detention in this condition would be jeopardizing his rights of life and personal liberty as guaranteed under the Constitution. Therefore, in due consideration of the

entire as above, the Court is inclined to allow bail prayer of the petitioner.

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 District and Sessions Judge, 2nd Court and Special (NDPS) Court at Siliguri; also subject to the condition that, he shall appear before the trial court on every date of hearing until further orders, shall not leave jurisdiction of the trial Court without prior permission of the trial Court and shall not intimidate witnesses nor tamper with evidence in any manner whatsoever.

(Rai Chattopadhyay, J.)