

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

CRM/3/2025

In Re: An application for bail under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 in connection with
Special Case No. 34 of 2024 under Section 22 (c), of
the Narcotic Drugs and Psychotropic Substances Act,
1985

And

In the matter of : Athish Kumar

Mr. M.A.Sahil ... for the petitioner
(on behalf of Mr. Rakesh Pal Gobind)

Mr. Sumit Karmakar ... for the respondents

July 09, 2025
[AKB]
Item No.5

This is an application under Section 483 of Bharatiya
Nagarik Suraksha Sanhita, 2023 praying for bail in
connection with FIR No.81 of 2024 of PS Bambooflat, Under
Section 22(c) of the NDPS Act pending before the learned
Special Judge, NDPS Court at Port Blair being Special Case
No. 34 of 2024.

Learned counsel for the petitioner submits that the
petitioner was arrested by the police of PS Bambooflat on
24.08.2024 on the allegation that a commercial quantity of
Narcotics have been seized from the possession of the
petitioner.

Learned counsel for the petitioner has drawn
attention of this Court to the seizure memo which reflects
that the alleged seizure was made at 2035 Hours. The
petitioner also relied upon the report under Section 42 of
the NDPS Act, wherein the Station House Officer has

informed to the Higher Authority for conducting raid. He submits that as per the FIR, the information was received at 1810 Hours and subsequently a written information was send to the Higher Officer, but that does not reflects at what time it was sent to the Higher Authority. He has stated that as per Section 50 of the NDPS Act it was stated that the information was received at 1810 Hours, but in the notice Under Section 42 it was recorded that the information was received at 1830 Hours.

Learned counsel for the petitioner brought to the notice of this Court to the charge sheet filed by the police authority after completion of investigation and submitted that as per charge sheet the independent witnesses were arrived on 1850 hours and about 1900 hours the SHO of the concerned PS comprising of the Gazetted Officer had reached the place of occurrence and alleged seizure was made at 2035 hours. But in the charge sheet it is mentioned that at 2005 hours the informer informed about the person who was coming by a walk towards the Hope Town Jetty to the Bus Stand. By referring the said documents, the learned counsel for the petitioner submits that there was several contradictions with regard to the timing of the alleged offence and with regard to the seizure of the alleged Narcotics.

Learned counsel for the petitioner further submits that in the present case altogether seven accused persons have been arrested. Out of seven accused six persons have

been released on bail, but this petitioner have been languishing in the custody since the date of arrest till today and till date no charge has been framed. He further submits that the petitioner has also filed an application for examination of the three witnesses who are the material witnesses in the case at a time but till date no charge has been framed accordingly witness could not be examined. In the meantime one of the accused who released on bail has filed an application for discharge and as such the case has not been proceeded further. He submits that no charge is framed, there is no chance of completing the evidence at the earliest.

Learned counsel further submits that the petitioner is the only bread earning member in the family having two minor children who are school going and due to the detention of the petitioner, the family of the petitioner are facing great difficulty. He further submits the petitioner is permanent resident of these Islands and born and brought up in these Islands and as such there is no chance of absconding of the petitioner from these Islands.

Per contra, the learned Public Prosecutor submits that the six accused persons have been enlarged on bail has nothing was seized from the said accused persons. The said accused persons have been arrested on the statement made by the co-accused persons. He submits that commercial quantity of Narcotics have been seized from the petitioner

and the petitioner has not made out any case to come out from Section 37 of the NDPS Act.

Mr. Karmakar, learned advocate further submits that immediately after disposal of the application filed by the co-accused for discharge, charge will be framed and the trial will be commenced. He prays for rejection of the bail.

Learned Public Prosecutor has relied upon a judgement passed by the Hon'ble Division Bench of this Court in the Case of **Ananta Barman vs State of West Bengal** passed in **CRM (NDPS) 1617 of 2024 dated 02.05.2025** wherein the Hon'ble Division Bench of this Court has held that mere not filing of the supplementary charge sheet along with chemical examination report the petitioner will not entitled to get the bail.

Heard the learned counsel for the respective parties and perused the materials on record.

The petitioner was arrested by the Police of PS Bambooflat on 24.08.2024 on the allegation that 1295 Gram of Heroin was seized from the possession of the petitioner. Subsequent during the investigation the police have arrested other six accused persons and subsequently they have been released on bail as nothing was seized from the possession of the said accused persons.

This Court finds that the alleged Narcotics was seized by police by way of seizure memo on 24.08.2024 and on 26.08.2024 inventory of the seizure was made. But the Narcotics was sent to the CFSL only on 25.09.2025 and the

CFSL has sent the report on 21.11.2024. As per Rule 14 of NDPS Rules notified on 23.12.2024 the Chemical Laboratory shall submit its report to the Magistrate with the copy to the Investigating Officer within fifteen days from the date of sample. The prosecution failed to show that whether immediate after the inventory the materials was directly sent to Laboratory in terms of Rule 13 of the NDPS Rules. It is also find that the report was not sent to the jurisdictional Magistrate directly with a copy to the Investigating Officer, but the report was sent directly to the Investigating Officer instead of sending to the Magistrate. This Court also found that the petitioner is in custody since 24.08.2024 but for one or the other reason the case has been adjourned and till date no charge has been framed. It is found from the record that one of the accused has filed an application for discharge and is pending for disposal.

Considering the above this Court find that during the investigating the Investigating Officer has committed several errors by sending Narcotics to the CFSL. The CFSL has caused delay for sending to the learned Magistrate and CFSL also not sent the said report directly to the Magistrate and sent the same to the Investigating Officer.

Learned counsel for the petitioner have also raised certain irregularities with regard to the time of the seizure information to the Senior Officer and with regard to the issuance of Notice under Section 42 and Section 50 of the NDPS Act .

Considering the above this Court finds that the petitioner has made out a case to come out from Section 37 of NDPS Act.

Accordingly the petitioner may find a bail of Rs. 20,000/- with two sureties of Rs. 10,000/- each. One surety must be local with the satisfaction of learned Chief Judicial Magistrate at Port Blair. If on bail the petitioner shall appear before the PS Bambooflat on alternative day and he shall appear before the trial on each and every date of hearing and he shall not leave these Islands without the prior permission of the Trial Court.

CRM/3/2025 is disposed of.

(Krishna Rao, J.)