

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

CRM(NDPS)/5/2026

Saw Herald

Vs

The State

Mr. Manas Ajai Sonkar
Mr. Sumit Kumar Sakthi
Mr. Manojit Baraik ... for the petitioner

Mr. Sumit Kumar Karmakar ... for the State

April 24, 2026
[SR]
Item No.1

1. Learned counsel for the petitioner contends that there is no direct nexus between the petitioner and the alleged offence even as per the disclosure in the FIR.

2. By placing reliance on the seizure list, a copy of which has been handed to the Court by learned counsel for the petitioner, it is submitted that the only article seized from the petitioner was a mobile phone and not any contraband substance.

3. That apart, it is submitted that none of the accused persons named the petitioner as being involved in the crime. It is further submitted that the petitioner is languishing in custody for about 196 days and has no past antecedents of crime. Moreover, out of 29 witnesses cited by the prosecution, none have been examined as yet, creating a doubt as to the trial being concluded soon.

4. The petitioner's alleged involvement was only restricted to driving the car from which the offending material was

recovered. However, it is pointed out that even as per the prosecution case, the material was recovered not from the person of the petitioner but from the passenger who was sitting in the car. Hence, there is no direct nexus between the petitioner and the alleged offence.

5. Learned Public Prosecutor, while opposing the bail, submits that the petitioner was driving the car in which the contraband materials were recovered and, as such, it can be inferred that the petitioner was in constructive possession of the seized material.

6. Moreover, the car which was been driven was a private car and not a commercial vehicle, which belongs to the father of the petitioner. Thus, it is submitted that the involvement and knowledge of the petitioner in the crime cannot be ruled out.

7. Learned Public Prosecutor places reliance on the second limb of Section 37(b) of the NDPS Act, 1985 and argues that the rigours of the said provision in respect of bail also apply to offences involving commercial quantity, thus validating the allegation of the involvement of the petitioner in the offence.

8. Heard learned counsel for the parties.

9. From a perusal of the seizure list, it is seen that the material allegedly recovered from the petitioner was only a mobile phone.

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.

11. That apart, no past antecedent of crime of the petitioner has been pointed out and the petitioner is already in custody for about 196 days, whereas the chargesheet was filed on November 06, 2025 after completion of investigation, and out of 29 charge sheeted witnesses none has yet been examined.

12. On the other hand, Section 37(1)(b) of 1985 Act cannot be read in isolation from the offences mentioned in the said Act. In the complete absence of any material to directly connect the petitioner to the alleged crime, at least till this stage, the benefit of doubt should go to the accused.

13. In view of the above and taking into consideration that the petitioner has no past criminal antecedent and that the Public Prosecutor has been heard, the Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of the offence and is not likely to commit any offence while on bail.

14. Apart from the rigours of Section 37 of the 1985 Act not being *prima facie* applicable to the petitioner, even if it is so assumed to apply, the ingredients of Clause (ii) of Section 37(1)(b) are attracted in the present case.

15. Accordingly, CRM (NDPS) 5 of 2026 is allowed on contest, thereby granting bail to the petitioner on condition that the petitioner furnishes bond of Rs.10,000/- (Rupees ten thousand only) with two sureties of like amount each, one of whom must be local, subject to the satisfaction to the learned Chief Judicial Magistrate, Port Blair. Furthermore, the petitioner shall not leave the territorial jurisdiction of the North and Middle Andaman District, except for the purpose of attending the Trial, without prior leave of the jurisdictional Court.

16. That apart, the petitioner shall report once every fortnight to the Mayabunder Police Station, within the jurisdiction of which he resides.

17. The petitioner shall also not make any attempt to contact the witnesses and/or intimidate and/or induce the witnesses and/or tamper with the evidence in any manner throughout the period of trial.

(Sabyasachi Bhattacharyya, J.)