06.11.2026
07.
Ct.No.07
BP/AGM

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

CRM (NDPS) 689 of 2026

In Re:- An application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Pradhan Nagar Police Station Case No.467 of 2025 dated July 05, 2025 under Section 21(c)/22(c) of the Narcotic Drugs and Psychotropic Substances Act giving rise to C.R. NDPS Case No.88 of 2025 (CIS No.8/25).

And

In the matter of **: Sajal Das**

.... Petitioner

Mr. Navanil De
Mr. Srijan Ghosh
..for the petitioner

Mr. Avrojyoti Das, Ld. APP
Mr. Rajdeep Das
..for the State

1. In this application for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short BNSS), the petitioner is charged of offences under Section 21 (c) and 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act).

2. The core issue is whether the accused who is in custody since 5th July, 2025 and the charge sheet has been filed on 31st August, 2025 is to be released on bail in view of the provisions of Article 21 of the Constitution of India vis-à-vis the restrictions laid down under Section 37 of the NDPS Act.

3. The petitioner has cited a judgment delivered on 5th November, 2026 in Criminal Appeal arising out of **Special Leave Petition (Criminal) Nos. 12451-12453 of 2026 (Sri Sujit Das & Ors. Etc. –versus- Union of India)**. By relying upon paragraph 48 of the said judgment it is submitted that the Hon'ble Supreme Court in the said case has expressed its reservation regarding the ratio laid down by the Supreme Court in the judgment reported in 2026 (7) SCC 513 corresponding to **2026 SCC Online SC 671 (State of Punjab-versus- Sukhwinder Singh @ Gora).**

4. In Sukhwinder Singh @ Gora (supra), the Supreme Court has held that the mandatory requirement under Section 37 (1) (b) (ii) of NDPS Act has to be satisfied even if the accused seeks bail in the light of Article 21 of the Constitution of India.

5. In Sujit Das & Ors. (supra), the Supreme Court in paragraph 49 thereof has expressed reservation about the observations made in Sukhwinder Singh @ Gora (supra) in respect of the rights conferred by Article 21 of the Constitution of India.

6. The petitioner, therefore, says that in the light of the observations made in the Sujit Das & Ors. (supra), the ratio laid down in Sukhwinder Singh @ Gora (supra) is whittled down and an accused under the NDPS Act despite there being rigours under Section 37 of the said Act is entitled to be enlarged on bail, if the conditions for granting bail under Article 21 of the Constitution of India are

attracted. The long period of the detention and that charge-sheet has been already filed, the petitioner is entitled to bail under the provisions of Article 21 of the Constitution of India.

7. On behalf of the prosecution, three judgments have been cited to oppose the prayer for bail.

a) A single Bench judgment of this Court in **CRM (NDPS) 388 of 2026 (Manoyara Beowa @ Manwara Bewa Vs. The State of West Bengal)** delivered on 3rd September, 2026 is relied upon to submit that in paragraph 15 thereof, the learned Single Judge after considering all relevant judgments have held the following:

> ***15.*** *The salient principles of law that emerge from the aforesaid decisions, read together harmoniously, are as follows: -*
>
> ***(i)*** *In a case involving seizure of commercial quantity of narcotic drug and/or psychotropic substance, bail is not be granted unless the Court is satisfied that there are reasonable grounds to believe that the accused has not committed the offence and that he is unlikely to commit any offence while on bail. Such a finding must be recorded in the order granting bail.*
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> ***(ii)*** *Article 21 of the Indian Constitution includes within its fold a citizen's right to speedy trial in a criminal case. However, to start with, Article 21 of the Indian Constitution, insofar as the said right is concerned, must operate within the framework of the NDPS Act. Some delay in progress of the trial, is not ground enough to grant bail to the accused ignoring the provisions of Section 37 of the NDPS Act.*
>
> ***(iii)*** *If the accused/under-trial is in custody for a 'prolonged period' and there is no possibility of an early conclusion of the trial, Article 21 of the Indian Constitution will operate with its full might and override the restriction in Section 37 of the NDPS Act entitling the Courts to enlarge the accused person on bail without recording its satisfaction on the two aspects mentioned in Section 37 of the NDPS Act.*
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> ***(iv)*** *The observation at paragraph 9 of the two-Judge Bench judgment in* ***Sukhwinder Singh's case (Supra)*** *that 'in matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial.', seems to be*

contrary to the observation of the Supreme Court in the three-Judge Bench decision in the case of ***K. A. Najeeb's case (Supra)*** *to the effect that 'whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence'.* ***K.A. Najeeb's case*** *also clarifies that the constitutional courts, in appropriate cases, has the power to grant bail in NDPS cases involving commercial quantity of contraband notwithstanding the restrictions in Section 37 of the NDPS Act.*

(v) *What constitutes 'prolonged incarceration' justifying grant of bail has not been expounded by the Hon'ble Supreme Court or any relevant statute as is noted by the Hon'ble Supreme Court in its decision in the case of* ***Balraj Singh alias Billa, (Supra)****.*

b) The prosecution also relied upon the judgment reported in **2026 SCC Online SC 1058 (State of Punjab –versus- Balraj Singh @ Billa).** Relying upon paragraph nos. 19, 20 and 22 it is submitted that Article 21 of the Constitution of India has to be considered in the light of the restriction imposed under Section 37 of the NDPS Act.

c) The prosecution has then relied upon the judgment reported in (2021) 3 SCC 713 (Union of India – versus- K. A. Najeeb). By relying upon paragraph 17 and 19 of the said judgment. It is submitted that the provisions under Section 37 of the NDPS Act are more stringent than Section 43-D (5) of the Unlawful Activities (Prevention) Act, (in short UAPA Act). It is further submitted by the prosecution that K. A. Najeeb (supra) is a judgment delivered by Three Judge Bench and as such will have an overriding

effect over Sri Sujit Das (supra) which is delivered by a Bench of two judges.

Moreover, according to the prosecution, the Supreme Court in Sri Sujit Das (supra) has considered the provisions of Article 22 (2) of the Constitution of India and not the provisions of Article 21.

After hearing the parties and considering the materials on records, I find that NDPS is a special statute which was promulgated in view of the international convention to consolidate the law relating to Narcotic Drugs and Psychotropic Substances and by imposing stringent conditions to prevent illicit drug trafficking and abuse.

The right of a detenu accused guaranteed under Article 19 fell for consideration before the Hon'ble Supreme Court as far back as in 1975 in the judgment reported in ***1975 (3) SCC 185 [Bhuvan Mohan Patnaik & Ors.vs. State of Andhra Pradesh & Ors.]***. This was further considered along with Article 21 of the Constitution of India by the Hon'ble Supreme Court in the judgment reported in 2000 (5) SCC 712. Paragraph 21 and 24 of the said judgment clarifies the personal liberty available to an undertrial prisoner. All these judgments fell for consideration before the Hon'ble Supreme Court in the judgment reported in (2001) 7 SCC 673 in the light of Section 37 of the NDPS Act wherein it was held that in case of an offence punishable for a term of imprisonment of five years or more the detenu shall generally be not released on bail. Negation of bail is the rule and its grant an

exception under Section 37 (1) (b) (ii) of the NDPS Act. The Hon'ble Supreme Court in the said judgment has also clarified that unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of an offence with which he is charged and further that he is not likely to commit any offence while on bail, a detenu can be released on bail.

It is at the same time to be kept in mind that statutory restrictions under special statutes does not oust the ability of the constitutional court to grant bail on the ground of violation of part 3 of the Constitution of India as held in judgment reported in 1994 6 SCC 731.

In the light of the observations made by the Hon'ble Supreme Court as discussed hereinabove which has been considered in details in Manoyara Beowa (supra), I wish to address the issue on a more fundamental points.

Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. An arrest of a person under the provisions of NDPS Act is a procedure laid down under law. Even if, the accused faces the charges under Section 21 (c) and 22 (c) of the NDPS Act as in the instant case, his right to have a speedy trial is not taken away in view of the restrictions laid down under Section 37 of the NDPS Act when Article 21 of the Constitution safeguards the same.

The Court, however, has held in majority of the judgments, the ratio whereof I am inclined to follow is

required to record satisfaction regarding the twin conditions laid under Section 37 of the NDPS Act even when a bail application is considered in the light of Article 21 of the Constitution of India.

At the same time one cannot lose sight of the fact that in a country like that of us, a person from whose custody contraband of commercial quantity is recovered may have been involved into such act under different compulsions arising out of the socio economic condition prevalent in the civil society where he lives. On one hand, an accused who is arrested while dealing with Narcotic Drugs and Psychotropic Substances can owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk of the society in case a potential criminal if left at large pending trial, the Courts are tasked with deciding whether an individual ought to be released pending trial or not as observed by the Supreme Court in the judgment reported in ***1994 (6) SCC 731 (para15) (Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India & Ors.).*** This is because by further acts of such nature, the undertrial accused is likely to jeopardize the socio economic condition of the country as also risk the right to life of other which is again guaranteed by the Constitution as the members of the civil society has also the right to live with dignity.

So the issue of personal liberty of an accused vis-à-vis the personal rights and liberties of the civil society is

required to be weighed failing which the object of the NDPS Act will get frustrated.

At the same time when an accused approaches the Court for being enlarged on bail, if the contraband substance is recovered from his custody, it cannot be even prima facie said that the detenu is not accused of the offences charged against him. Even if, the detenu does not have any past antecedent then also it cannot be convincingly said that the detenu will not commit same offence on having been released on bail without clinching prima facie evidence.

If the twin conditions under Section 37(1) (b) (ii) of NDPS Act are required to be strictly adhered even if there is no certainty as to the completion of the trial, the right of having a speedy trial guaranteed to the detenu is also likely to be frustrated but that right cannot be given a preference.

The right path according to me is to judge each case in the light of the facts of the said case instead of going into a generalized view as sought to be propounded on behalf of the petitioner and the prosecution.

In the instant case, the petitioner has been arrested with commercial quantity of contraband but he has no past antecedent. Although, the petitioner is in custody from 5th July, 2025 and the charge-sheet has been filed on 31st August, 2025 the risk as expressed by the Supreme Court persists.

The chances of the petitioner intimidating the witnesses or tampering with evidence in the instant case cannot also

be ruled out keeping in mind the above factors as also the proximity of international border from the place where the petitioner resides, I am not inclined to grant bail as there is also possibility of the petitioner being absconding even if stringent conditions for bail are imposed.

The prayer for bail of the petitioner is, therefore, rejected.

CRM (NDPS) 689 of 2026 is dismissed.

(Arindam Mukherjee, J.)