

02.06.2021
Court No.28
Item No. 13
Krishnendu
Bail Granted

**CRM 3720 of 2021
(Via video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : **Sanjib Roy**

Petitioner

Mohammad Khairul

For the Petitioner

Mr. Saibal Bapuli

Mr. Arijit Ganguly

Mr. Bibhaswan Bhattacharya

For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Habra Police Station Case No. 990 of 2018 dated 05.12.2018 under section 21(b)(ii)(C) of the N.D.P.S. Act.

Mr. Khairul, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. The allegations levelled against him are in the abstract. Upon completion of investigation, charge sheet has been filed and the petitioner is in custody since 5th December, 2018. Out of seven witnesses, only two witnesses have been examined and in view thereof, there is no possibility towards conclusion of the trial in the near future. He further submits that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed under Article 226 of the Constitution of India.

Mr. Bapuli, learned advocate appearing for the State opposes the petitioner's prayer and submits that the contraband substance above commercial quantity was recovered from the possession of the petitioner and as such he is directly involved in the alleged offence. Trial is in progress and the delay, which has occasioned towards conclusion of trial, is not totally attributable to the State. He further submits that the petitioner's prayer for bail was last rejected on 9th December, 2020 and thereafter, the pandemic intervened. However, answering to a Court's query, Mr. Bapuli submits that no other criminal case is pending against the petitioner. In support of such contention, he has placed a letter of the Inspector-in-Charge, Habra Police Station. Let the same be kept on record.

We have heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

In consideration of the present pandemic situation and rapid proliferation of the virus, bail prayer needs to be considered liberally. The petitioner is languishing in custody since 5th December, 2018 and there is also no possibility towards conclusion of the trial in near future. We also do not find that the petitioner has any criminal antecedent. Article 21 of the Constitution of India creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice. [See the judgments delivered in the cases of Hussainara Khatoon – Vs- State of Bihar, Patna, reported in 1980

1 SCC 81 and Abdul Rehman Antulay & Ors. -Vs- R.S. Nayak & Anr., 1992 1 SCC 225 and the order passed by the Hon'ble Supreme Court in Re: Contagion of Covid-19 Virus in prisons and the judgment delivered in the case of Shaheen Welfare Association - Vs- Union of India & Ors, reported in (1996) 2 SCC 616]

In the said conspectus and without going into the merits and demits of the rival submissions, we are of the opinion that further detention of the petitioner is not warranted in the facts and circumstances of the case.

Accordingly, we direct that the petitioner, namely, **Sanjib Roy**, shall be released on bail upon furnishing a bond of Rs. 10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Judge under N.D.P.S. Act, Barasat on condition that the petitioner shall reside within the jurisdiction of Habra Police Station and shall meet with the Officer-in-Charge of Habra Police Station once a fortnight. He shall also attend the learned Trial Court on all the dates, as specified for hearing.

It is further directed that the petitioner shall not tamper with the evidence or intimidate the witnesses.

In the event he fails to comply with the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 3720 of 2021, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Shampa Sarkar, J)
Chakraborty, J)

(Tapabrata