

20.12.2021
tkm/ct 28
sl no. 117

C.R.M. 7987 of 2021

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with NCB Case no. 23/NCB/Kol/2014(16/2014-15) under sections 20(b)(ii)(c) and 25 of the NDPS Act
And

Allowed

In Re : Liyakat Ali petitioner

Mr. Kazi Safiulah
..... for the petitioner

Mr. Y J Dastoor, Id ASG
Mr. P Edulji
Mr. S Saha
..... for the NCB

Petitioner renews his prayer for bail on the ground of delay in progress of trial and submits that he is in custody for more than seven years. He submits prayer for bail was rejected earlier and this court directed conclusion of trial within a stipulated time frame. Prosecution has failed to comply such direction. Petitioner may be released on bail.

Learned Additional Solicitor General opposes the prayer for bail. He submits trial court had illegally closed the prosecution evidence in 2016 on an erroneous interpretation by an observation of this court. Subsequently, a revisional application was filed which is pending consideration before this court.

We have considered the materials on record. The present case involves alleged possession of narcotic substance above commercial quantity. Hence, restrictions under section 37 of the NDPS Act stand in the way if bail is to be considered on merits. However, in the present case petitioner seeks bail due to undue protraction in trial. We note prayer for bail of the petitioner was

rejected earlier and this court had directed conclusion of trial within a time frame. Prosecution had failed to comply with such direction and the trial court closed the prosecution evidence. Such decision has been assailed though out of time before this court. Moreover, revisional application was dismissed for default and was subsequently restored. The revisional application is pending consideration before a learned Single Judge of this court. In **Union of India Vs. K A Najeeb**¹, Apex Court while dealing with grant of bail under UAPA Act held power of constitutional court to grant bail on breach of fundamental right to speedy trial under Article 21 of the Constitution would not be hindered by the statutory restrictions under the special law. The ratio of the aforesaid decision applies to the facts of this case as we are considering the prayer for bail on the ground of undue delay in trial and not on merits. In the present case we note prosecution evidence was closed in 2016 and the revisional application has not been pursued with due diligence. Petitioner is in custody for more than seven years.

Under such circumstances, further detention of the petitioner would infract his fundamental right to speedy trial under Article 21 of the Constitution and he is entitled to bail on such score.

Accordingly, the petitioner released on bail upon furnishing a bond of Rs. 20,000/- with two sureties of like amount each, one of whom must be local to the satisfaction of the learned judge, special court under NDPS Act, Hooghly on condition that he shall appear

¹ (2021) 3 SCC 713

before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner while on bail, shall not leave the district of Hooghly without the permission of the trial court and on further condition that the petitioner shall report to the Officer-in-Charge of the Mogra P.S once a week until further orders.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application being CRM 7987 of 2021 is disposed of.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)