

CRM No.11181 of 2020

Via video conference

09.08.21

(S.R.)

Sl.03

Ct.30

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on December 23, 2020 in connection with NDPS Case No.03 of 2015 arising out of NCB Crime No.03/NCB/KOL/2015 (23/2014-15) dated 04.02.2015 under Sections 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act;

And

In re: Mithun Dhara

... petitioner.

Mr. Kaustav Bagchi

Mr. Debayan Ghosh

... for the petitioner.

Mr. Y. J. Dastoor, ASG

Mr. Phiroze Edulji

Mr. Rajesh Kumar Shah

... for the NCB.

In support of prayer for bail Mr. Bagchi, learned advocate for the petitioner submits that he has been languishing in custody for more than six and half years and in the meantime trial has not shown any tangible progress causing the petitioner to suffer serious prejudice.

Mr. Dastoor, learned Additional Solicitor General for the NCB submits that the evidence of PW 1 has already been concluded including his cross-examination. Only four witnesses are still left to be cross-examined i.e. (PW2, PW3, PW4 and PW5), out of which PW4 and PW5 are the investigating officers.

According to Mr. Dastoor, there has been recovery of 44 kilograms of ganja from the residence of the petitioner, and upon conclusion of investigation charge sheet was submitted citing as many as eight witnesses, out of which one witness has already expired, and another has been gained over, for which, the said witness will not be examined. Mr. Dastoor candidly submits that only four witnesses are required to be subjected to cross-examination, whose cross-

examinations are lying deferred by reason of an application under Section 231 Cr.P.C. being preferred by the petitioner and ultimately allowed by the learned trial court. Mr. Dastoor also submits that trial may be concluded very shortly and there is fair chance of such conclusion of the trial. There is thus no further witness still left to be examined. As regards the delay caused, Mr. Dastoor is very much vocal in his submission that there was no intentional delay caused by prosecution contributing largely to the alleged protraction of trial.

In reply, Mr. Bagchi submits that some of the dates though fixed in trial, but the same could not be effectively utilized, as the witnesses, proposed to be examined on the scheduled date, did not turn up, yielding delay to the progress of the trial.

Having considered the submissions of both sides in context with the progress of the trial, we are of the considered view that since the trial is about to conclude shortly, it is not a fit case, where privilege of bail should be granted to petitioner ignoring the possibility of his abscondence. The prayer for bail is, thus, considered and rejected.

We, however, take notice of the anguish expressed by Mr. Bagchi, as regards the delay caused in the progress of the trial, and request the trial court to finish the trial within December 2021, and, if necessary, to take all such steps adhering to the mandate available under Sections 309 CrPC by fixing consecutive dates for the purpose of cross-examination of PW2, PW3, PW4, and PW5.

It is clarified by Mr. Dastoor that all the prosecution witnesses will be present on the date/dates scheduled for their cross-examination.

Mr. Bagchi is fair enough to submit that learned defence

counsel for the petitioner would render his all sorts of cooperation so that trial may be concluded within stipulated period of time.

This direction is given keeping in mind the peculiar circumstances involved in this case, as only four witnesses are left for cross-examination by reason of 231 CrPC being allowed. By reason of such peculiarity of circumstances involved in this case, the above order should be treated as mandatory and preemptory.

The learned trial judge further is directed to show his all promptitude and alacrity so that the logical conclusion of this case may be reached within the period, mentioned above.

With the aforesaid observations, the application for bail, being CRM No.11181 of 2020, is disposed of.

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

(Subhasis Dasgupta, J.)

(Tapabrata Chakraborty, J.)