

29.06.2022.
06.
Ct.No.28
as
(Rejected)

C.R.M. (NDPS) 574 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No. 291 of 2017 arising out of NCB Crime No.62/NCB/KOL/2017 dated 12.12.2017 under Sections 22(c)/29 of the N. D. P. S. Act.

In the matter of : Rhythm Das Ray @ Rhythm Das Roy.
... Petitioner.

Mr. Syed Shahid Imam,
Mr. D. M. Chowdhury,
Ms. Shaika Khan.

...for the Petitioner.

Mr. Uttam Basak.

...for the NCB.

Heard the learned Advocates appearing for the parties.

Learned Advocate for the petitioner renews his prayer for bail. He submits there is inordinate delay in the trial of the case. In spite of direction given by this Court, there is hardly any progress in the matter since last rejection of bail in March, 2021. He relies on various orders of the Hon'ble Apex Court regarding grant of bail in narcotic cases due to delay in trial.

Learned Advocate for the NCB opposes the prayer for bail. He submits petitioner is a co-conspirator with Nilay Ghosh in dealing in narcotic substance. Conspiracy between parties is evident through money trend in the bank account of the petitioner. Delay in trial noted cannot be attributed to the prosecution.

We have considered the materials on record. Instant case relates to a conspiracy between accused persons to undertake inter State trafficking in narcotic drugs. Co-accused Nilay

Ghosh was arrested with a consignment of narcotics. Jerome Watson (a customer who had come to purchase drugs) was also apprehended. Keeping in mind the extent of complicity of Jerome Watson in the crime he has been enlarged on bail. Culpable role of the petitioner in the conspiracy has been considered by various Benches of this Court on a number of occasions. Materials collected in the course of investigation including bank records show monies were credited in the account of the petitioner by co-accused Nilay Ghosh. There is nothing on record to show any licit transaction between the parties, justifying such transactions.

Under such circumstances which prima facie lead to an inference of conspiracy and in view of the statutory restrictions under Section 37 of the NDPS Act, bail prayer of the petitioner was rejected earlier on merits. We find no reason to taking a different view in the present application.

With regard to delay in progress of trial, we have examined the order sheets of the trial court. At the initial stage, delay was caused due to abscondance of co-accused Saran Gopal Krishnan. Upon direction given by this Court in CRM 11058 of 2018 he was declared a proclaimed offender and charges came to be framed against the petitioner and co-accuseds including Nilay Ghosh on 5th August, 2019. Furthermore, the Court lay vacant for a period of time and thereafter the trial was interdicted due to pandemic conditions. Hence, delay cannot be attributed to the prosecution. Presently dates have been fixed for examination of witnesses including

aforesaid Mrs. Rasika Rajendra Bandiwedkar, personnel from DTDC who were allegedly utilised as conduits by the petitioner to dispatch drugs to Nilay Ghosh. In view of delicate stage at which the trial is poised particularly the examination of the aforesaid witnesses who are vital for the unfolding of the prosecution case of conspiracy and as there is ample possibility these witnesses may be won over if petitioner is released on bail, we do not consider it prudent to release the petitioner on bail.

We have considered the orders passed by the Hon'ble Apex Court in ***SLP. Leave to Appeal (Crl.) No.5617 of 2021 (Tapan Das Vs. Union of India)***, ***SLP (Crl) No.8823 of 2019 (Chittta Biswas alias Subhas Vs. The State of West Bengal)***, ***SLP (Crl.) No.5187 of 2021 (Kulwant Singh Vs. The State of Punjab)*** and ***SLP (Crl.) No.3813 of 2020 (Amit Singh Moni Vs. State of Himachal Pradesh)***. The said bail orders were passed in the factual backdrop of those cases which essentially relate only to possession of narcotic substance from single/multiple accuseds. The present case discloses an intricate and complicated web of conspiracy between accused persons in inter State trafficking of narcotics through the dark web. Complexity of the case as well as the nature of evidence proposed to be led are relevant considerations which clearly distinguishes the present case from the factual matrix of those in respect of which bail orders have been cited before us. It is trite to observe bail orders are matters of moment and are passed in the factual matrix of a

particular case. None of the orders cited before us declare any law which is of universal application.

In the light of the aforesaid discussion particularly the complexity of the prosecution case involving a deep conspiracy between accused persons in an inter State trafficking of narcotics and as the delay in the matter cannot be wholly attributed to the prosecution and the delicate stage at which the trial is poised requiring examination of the vital witnesses who may be won over resulting in an adverse impact on the fate of the prosecution, we do not wish to enlarge the petitioner on bail.

We request the trial court to take all prompt steps to conduct the trial on a day to day basis and conclude the same as expeditiously as possible preferably within six months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

It is further proposed prosecution may take all endeavour to examine the vital witnesses of fact at the earliest before examining official witnesses.

Accordingly, the prayer for bail of the petitioner is rejected.

Department is directed to communicate a copy of this order to the learned trial Court for necessary compliance.

(Ananya Bandyopadhyay,J.)

(Joymalya Bagchi, J.)