

C.R.M. 8119 of 2021

06.04.2022
Sl. 65
Court No.29
sourav
(Rejected)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **Maidan** Police Station Case No. **112** of **2016** dated **28.06.2016** under Section **21(b)(ii)(c)/29** of the NDPS Act.

And

In the matter of: **Saibur Rahman @ Babar @ Saibur Rahaman**
....petitioner.

Mr. Dilip Kumar Samanta
Mr. Anindya Sundar Das
Mr. Biswajit Hazra
Mr. Debapriya Samanta
Mr. Archisman Sain
Mr. Samrat Ghosh
Mr. Arif Md. Khan

...for the petitioner.

Mr. Sanjoy Bardhan
Mr. Nirupam Dhali

...for the State.

Petitioner renews the prayer for bail.

Learned advocate appearing for the petitioner submits that the petitioner is in custody in excess of 2100 days. The petitioner was arrested on June 28, 2016. He refers to his written submissions and submits that out of eight prosecution witnesses, only two witnesses were examined till date. He refers to the dates of examination of such witnesses which were from 2017 to 2021 that is on 12 dates. He refers to the prayer for adjournments being made on behalf of the accused which are only on three dates. He submits more adjournments were taken on behalf of the prosecution than that taken by the petitioner. He also submits that the trial was adjourned on the ground of resolution of the local Bar Association for 11 days for the period from 2017 till 2020. He submits that on the ground of lockdown, the proceedings were adjourned on two dates.

In such circumstances, learned advocate appearing for the petitioner submits that the petitioner is entitled to bail under Article

21 of the Constitution of India.

Learned advocate appearing for the State submits that commercial quantity of narcotics was recovered from the possession of the petitioner. The prosecution is not indolent with regard to the proceedings.

In the facts of the present case, the petitioner was arrested on June 28, 2016. The petitioner is in custody since then. The petitioner was arrested with commercial quantity of narcotics. Therefore, on the parameters of Section 37 of the NDPS Act, 1985 the petitioner is not entitled to bail since he is unable to rebut the presumptions thereunder.

However, the consideration is with regard to enlargement of the petitioner on bail under Article 21 of the Constitution of India.

The trial is in progress. Out of eight witnesses, two were examined. The examination of the witnesses commenced on June 12, 2017 as appearing from the written submissions on behalf of the petitioner. The examination continued over a period of time. Adjournments were taken at the trial both at the behest of the accused and by the prosecution. The number of adjournments taken on behalf of the prosecution are slightly more than that of the petitioner. The number of adjournments, however, given the context of the ongoing pandemic and other issues are not large.

About 13 dates were adjourned simply on the ground of resolution of the local Bar Association. The lockdown contributed to two adjournments.

Consequently, given the conduct of the local Bar Association in adopting the resolutions of “not to attend” and the intervening lockdown as also the ongoing pandemic, it cannot be said that the prosecution was indolent in conducting the case.

In such circumstances, we are of the view that the petitioner did not make out a case to be enlarged on bail under Article 21 of the Constitution of India.

Consequently, we are unable to grant bail to the petitioner.

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

C.R.M. 8119 of 2021 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

