

C. R. M. (NDPS) 1021 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 30.08.2022 in connection with NDPS Case No. N-126/2016 arising out of NCB Crime No.30/NCB/Kol/2016 under Section 21(c) of the NDPS Act.

And

In Re: ***Md. Samim Akhtar @ Samim Aktar***

... .. Petitioner

Mr. Manjit Singh
Mr. Gaganjyoti Singh

... .. for the petitioner

Mr. Rajdeep Majumder
Mr. Pritam Roy

... .. for the NCB

It is submitted on behalf of the petitioner that he is in custody for more than six years. It is further submitted there is hardly any progress in the trial since the last rejection of bail by this court in December, 2021.

Learned advocate appearing for the NCB submits one more witness has been examined. Date has been fixed for recording of further evidence on and from 09.11.2022.

We have considered the materials on record. We note petitioner has been in custody for more than six years and has prayed for bail on the ground of inordinate delay in trial. In ***Supreme Court Legal Aid Committee representing Undertrial Prisoners vs. Union of India & Ors.***¹, the Apex Court as an 'one time measure' granted bail to undertrials who had suffered detention for five years in cases involving narcotic substance above commercial quantity. Though such directive may not be treated as binding precedent under Article 141 of the Constitution of India, the same may be treated as a guideline to test whether the conduct of the prosecution has degenerated into a

¹ (1994) 6 SCC 731

harrassive one due to delay infracting fundamental right of an undertrial to speedy justice under Article 21 of the Constitution.

In the present case, petitioner had approached this court earlier in CRM 6088 of 2021. Balancing the right of the petitioner to speedy trial with the gravity of the offence, we gave peremptory direction for conclusion of trial within six months. Thereafter, only one witness has been examined. Nothing is placed on record to show that the petitioner had delayed the trial. Under such circumstances, we are of the opinion petitioner has made out a case for bail on the ground of inordinate delay in trial infracting his right under Article 21 of the Constitution of India.

When a constitutional court considers bail prayer of an accused on the ground of inordinate delay and not on merits, statutory restrictions engrafted under Section 37 of the NDPS Act does not get attracted. We are inclined to come to such conclusion in view of the observations made by the Apex Court in ***Union of India vs. K. A. Najeeb***² wherein the Court while dealing with restrictions under Section 43-D(5) of the UAPA Act observed as follows :-

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

In the light of the aforesaid discussion, we are inclined to hold petitioner is entitled to bail due to infraction of his fundamental right to speedy trial.

² (2021) 3 SCC 713 (paragraph 17)

Therefore, the accused/petitioner, namely ***Md. Samim Akhtar*** @ ***Samim Aktar***, be released on bail upon furnishing bond of Rs.20,000/- (Rupees Twenty thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the NDPS Act-cum-Additional Sessions Judge, 6th Court, Barasat, North 24-Parganas subject to condition that the said petitioner shall appear 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 or commit similar offences in future.

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 for bail, thus, stands **allowed**.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)