

10.11.2022
Sl. No.2
akd
[ALLOWED]

C. R. M. (NDPS) 1137 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 05.09.2022 in connection with NDPS Case No. 117 of 2017 arising out of NCB Crime No.46/Kol/2017 dated 02.08.2017 under Sections 8(c)/22/29 of the NDPS Act.

And

In Re: ***Sabur @ Sabur Hossain & Anr.***

... .. Petitioners

Mr. Prabir Majumder
Mr. Snehanshu Majumder
Ms. Sangeeta Chowdhury
Mr. Avishek Chatterjee

... .. for the petitioners

Mr. Kallol Kumar Basu

... .. for the NCB

It is submitted on behalf of the petitioners that they are in custody for more than five years. It is further submitted there is inordinate delay in the trial of the case which infracts their right under Article 21 of the Constitution of India.

In view of the aforesaid submission, report was called for with regard to the reason for the delay.

Report is placed on record on behalf of the NCB.

We have perused the report. From the report we find there is minimum contribution of the petitioners to the inordinate delay. Only two witnesses have been examined as yet.

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, *inter alia*, holding such protracted period of

¹ (1994) 6 SCC 731

detention infracts their right to speedy trial. The court further held bail may be granted in such cases notwithstanding the restrictions under Section 37 of the NDPS Act.

While interpreting restrictions to grant of bail under the UAPA Act, similar view was taken by the Apex Court in ***Union of India vs. K. A. Najeer***².

In the present case, we note petitioners have undergone detention for 5½ years. There is little possibility of the trial concluding in the near future.

In view of the aforesaid circumstances, we are of the opinion petitioners have been able to make out a case of breach of fundamental right under Article 21 of the Constitution of India and are entitled to bail on such score.

Therefore, the accused/petitioners, namely **(1) Sabur @ Sabur Hossain & (2) Jan Mohammad Saikh**, be released on bail upon furnishing bond of Rs.20,000/- (Rupees Twenty thousand only) each, 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, Krishnanagar, Nadia subject to condition that the said petitioners 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 they fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail automatically without reference to this court.

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

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

² (2021) 3 SCC 713

