

31.10.2022
Sl. No.4
akd
[ALLOWED]

C. R. M. (NDPS) 1249 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 11.10.2022 in connection with Nandakumar Police Station Case No.297 of 2017 dated 15.09.2017 under Sections 20(b)(ii)(c)/29 of the NDPS Act.

And

In Re: **Sk. Riyazuddin @ Kalo @ Kalam @ Sk. Riajuddin**
... .. Petitioner

Mr. Amal Krishna Samanta
... .. for the petitioner

Mr. Pravas Bhattacharya
Mr. Suman De
... .. for the State

It is submitted on behalf of the petitioner that he is in custody for more than five years. He prays for bail on the ground of inordinate delay in trial.

Learned advocate appearing for the State opposes the prayer for bail and submits trial is in progress and they propose to examine four more witnesses.

We have considered the materials on record. Prosecution case involves possession of narcotic substance above commercial quantity. Any prayer for bail on merits requires to be assessed in view of the statutory restrictions under Section 37 of the NDPS Act. However, in the present case, petitioner has sought for bail on the ground of inordinate delay in trial. He is in custody for more than five years. Nothing is placed on record to show petitioner contributed to the delay. In view of the law declared under similar circumstances, the Apex Court in **Supreme Court Legal Aid Committee** representing **Undertrial Prisoners vs. Union of India & Ors.**¹ enlarged undertrials, who had

¹ (1994) 6 SCC 731

suffered incarceration for five years, on bail as a '*one time measure*'. When the facts of the present case are identical with that of the **Supreme Court Legal Aid Committee** representing **Undertrial Prisoners (Supra)**, period of detention suffered by the undertrial i.e. five years in the said report may be taken as a relevant consideration to test the proposition whether there is inordinate delay in trial infracting his right under Article 21 of the Constitution of India.

In **Union of India vs. K. A. Najeed**², the Apex Court while considering similar restriction of bail on merits under UAPA Act held constitutional courts are entitled to release undertrials on bail due to inordinate delay infracting their right under Article 21 of the Constitution of India and in such cases restrictions under Section 43D(5) of the UAPA Act may not apply.

Section 37 of the NDPS Act imposes similar restriction and would yield to similar interpretation of law.

In view of the aforesaid circumstances, we are constrained to hold inordinate delay in conducting trial to which the undertrial had little or no contribution infracts his fundamental right to speedy trial and he is entitled to bail on such score.

In the light of the aforesaid discussion, we are of the opinion further detention of the accused/petitioner is not necessary and he may be enlarged on bail however, subject to strict conditions.

Therefore, the accused/petitioner, namely **Sk. Riyazuddin @ Kalo @ Kalam @ Sk. Riajuddin**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten 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

² (2021) 3 SCC 713

District & Sessions Judge, 3rd Court, Tamluk, Purba Medinipur 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 and on further condition that the petitioner, while on bail, shall not leave the jurisdiction of Nandakumar Police Station except for the purpose of investigation and/or for attending court proceedings and shall report to the Officer-in-charge of the said police station once in a week until further orders.

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**.

(Partha Sarathi Sen, J.)

(Joymalya Bagchi, J.)