

23.11.2022.
06.
Ct.No.28.
as/PA
(Allowed)

C.R.M. (NDPS) 1336 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Special Case No.51 of 2016 arising out of NCB Crime No.07/NCB/KOL/2016 under Sections 21(c)/29 of the NDPS Act and Section 8(C) of the NDPS Act.

In the matter of : Shiva Rathaur.

.... Petitioner.

Mr. Daanish Haque,
Mr. Abdul Zahid,
Mr. Siraj Munir.

...for the Petitioner.

Mr. Dipankar Dandopath,
Ms. Amrita Pandey.

...for the NCB.

Petitioner is in custody for more than seven years. There is inordinate delay in the trial of the case.

Learned Advocate appearing for the NCB opposes the prayer for bail. He submits trial has commenced.

We have considered the materials on record. Allegations involve transportation of 2100 bottles of phensedyl syrup containing codeine phosphate. Allegations are very grave and prayer for bail on merits would attract restrictions under section 37 of the NDPS Act. However, bail prayer has been made on the ground of inordinate delay in trial.

We note petitioner is in custody for more than seven years. Examination of PW1 is not complete. Nothing is placed on record to show petitioner had contributed to the delay while dealing with similar restrictions under UAPA, the Apex Court in

Union of India vs. K.A. Najeer¹ held prayer for bail on the ground of inordinate delay in trial would not attract the restrictions of section 43D(5) of UAPA. Similar exception may be interpreted in case of section 37 of NDPS Act.

Under such circumstances, we are of the opinion petitioner may be released on bail on the ground of inordinate delay in trial subject to strict conditions.

Accordingly, the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under N.D.P.S. Act, Malda subject to condition that he 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 on further condition that the petitioner while on bail shall remain within the District of Malda except for the purposes of attending court proceeding and shall provide the address where he shall reside while on bail to the Investigating Officer as well as the court below and report to the Officer-in-charge of the concerned Police Station within whose jurisdiction he shall reside once in a week until further orders.

In the event the petitioner fails to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

¹ (2021) 3 SCC 713

This application for bail is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)