

01.03.2022
Court No.01
Item No. 24
Saswata
(rejected)

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

**CRM (NDPS) 39 of 2022
(Via Video Conference)**

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Dinhata Police Station Case No. 197 of 2020 dated 15.06.2020 under Section 20(b)(ii)(c) of the NDPS Act.

And

In Re: **Karuna Barman**

Petitioner

Mr. Jaydeep Kanta Bhowmik

For the Petitioner

Mr. Arun Kr. Sarkar
Mr. Tapan Bhattacharya

For the State

The petitioner is seeking bail in connection with Dinhata Police Station Case No. 197 of 2020 under Section 20(b)(ii)(c) of the NDPS Act.

The learned advocate appearing for the petitioner is very much vocal in his submission that one of the so-called independent witnesses who has been examined in the instant case, has clearly spelt out the truth relating to the preparation of seizure list and putting signature thereupon. According to him, the said witness categorically stated that his signature was done while sitting in his medical shop and not at the spot. It is further submitted that despite the specific direction passed by this Court, while rejecting an earlier application for bail to conclude the trial within 20 weeks from the date of the order, only 3 witnesses have been examined so far.

The learned advocate for the State opposes the prayer for bail and submits that the trial is in progress but because of the unforeseen circumstances, it could not be completed within the time indicated therein.

Learned advocate for the petitioner immediately reacted to the aforesaid submission and submits that the prosecution failed to bring the witnesses on the dates fixed by the Special Court and because of their lackadaisical attitude the trial could not be concluded within the specified time.

Admittedly, this is a second round of litigation before this Court. The earlier application for bail being CRM 225 of 2021 was rejected on 11/02/2021 with a firm belief that the trial would be completed within a specified time. It is also not in dispute that out of 11 witnesses, 2 have been examined; of which one has been turned hostile. This led the learned advocate for the petitioner to inculcate an impression that the same would tantamount to rebut the presumption raised under Section 54 of the NDPS Act.

The evidence of the witness is before this Court. Rebuttal must be relatable to the possession of the contraband and such possession must be satisfactorily explained. Even if the witness has turned hostile, it does not automatically rebut the presumption drawn under Section 54 of the said Act. There must be a strong evidence and convincing materials in favour of the petitioner in order to constitute a rebuttal and not in the manner as has been done in the instant case.

Be that as it may, we have taken serious note where the trial has not been completed despite a specific time limited fixed by this Court on an earlier occasion. Whether it is at the behest of the prosecution or the Special Court, we do not want to delve to go deep into the same. What we expect in

the instant case is that both the Special Court, prosecution and the defence must cooperate with each other to secure the disposal within the time stipulated by the order of this Court. 8 witnesses are yet to be examined. We, therefore, direct the Learned Judge of the Special Court to fix a schedule of evidence/witness within 15 days from the date of the communication of this order. The prosecution shall bring the remaining witnesses on the dates so fixed and we hope and trust that the counter part of the learned advocate for the petitioner in the Trial Court shall cooperate with the Court and complete the recording of evidence without asking for any adjournments.

Learned Judge in the Special Court is further directed to complete the trial of the case within 3 months from the date fixed for recording the evidence of the remaining witnesses.

Since, we do not find any changed circumstances nor that the petitioner has been able to rebut the presumption having allegedly possessed the contraband above commercial quantity, in view of the embargo created under Section 37 of the NDPS Act, we do not think that this is a fit case where the petitioner should be released on bail.

In view of the above, the prayer for bail is *rejected*.

The application for bail being CRM (NDPS) 39 of 2022 is accordingly disposed of in the light of the aforesaid observations made hereinabove.

(Harish Tandon, J)

(Rabindranath Samanta, J)