

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

13.05.2022
Court No.01
rpan / 15

CRM (NDPS) 100 of 2022

In Re:- An application for bail under section 439 of the
Code of Criminal Procedure;

And

In Re: Biswanath Oraon & another

- Petitioners

Mr. Jaydeep Kanta Bhowmik
... for the Petitioners.
Mr. Abhijit Sarkar,
Ms. Namrata Das
... for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Matelli Police Station Case No.91 of 2014 dated 05.05.2014 under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Sections 489A/ 489B/ 489C/ 489E/ 468/ 471 of the Indian Penal Code.

Mr. Bhowmik, learned advocate appearing for the petitioners submits that the petitioners have been falsely implicated. They have already suffered long incarceration for about eight years. There is also no possibility towards conclusion of the trial in the near future since out of 12 witnesses only 5 have been examined till date.

He submits that even in a case involving 9310 Kgs of ganja, the Hon'ble Supreme Court in the case of Manoj Kumar Singh Vs. The State of West Bengal & Anr. [Special Leave to Appeal (Crl.) Nos.4711-4712/2020] has granted bail to the

petitioners therein who had suffered long incarceration for more than seven years placing reliance upon the judgment delivered in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India & Ors. reported in (1994) 6 SCC 731.***

He further submits that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed by Article 21 of the Constitution of India and in the said conspectus, further detention of the petitioners is not necessary.

Mr. Sarkar, learned advocate appearing for the State opposes the petitioners' prayer and submits that the delay towards conclusion of trial is not totally attributable to the State. Furthermore, the period of delay stands intervened by a period lost due to the pandemic. Let the status report, as produced, be kept on record. Answering our query, he submits that 196.2 Kgs. of ganja was recovered from the possession of the petitioners and as such, the statutory restrictions are attracted.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It is not a case that in numerous prior rounds before the Special Court and the High Court, there emerged enough reasons to believe that the petitioners were, *prima facie*, guilty of the accusations made against them. The petitioners have approached this Court for the first time questioning the Special

Court's order denying bail. It has not been brought to our notice that the petitioners have any antecedent or are involved in any money trail pertaining to narcotic trade.

Prima facie there is also no legitimate apprehension that the petitioners would flee from justice, if set free or are likely to commit any offence while on bail.

The petitioners cannot be held responsible for the delay, which has occasioned. They are languishing in custody for more than 8 years and there is also no possibility towards conclusion of the trial in the near future. These are all mitigating factors which tilt the balance towards the grant of bail to the accused petitioners.

In several cases, the Hon'ble Supreme Court has granted bail owing to the long period of incarceration and the unlikelihood of the trial being completed any time in the near future. The exposition of Article 21 in the case of *Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna*, reported in (1980) 1 SCC 81 was exhaustively considered afresh in the case of *Abdul Rehman Antulay and Ors. Vs. R.S.Nayak and Anr.*, reported in (1992) 1 SCC 225 and it was *inter alia* observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice.

Applying such proposition of law to the facts of the present case, we are of the opinion that further detention of the petitioners is not warranted.

Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs.20,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the concerned learned Additional Sessions Judge, 2nd Court, NDPS, Jalpaiguri with a further condition that the petitioners shall not leave the jurisdiction of Barasat Police Station, save and except for attending the learned trial court below on all the dates as specified for hearing.

It is further directed that the petitioners shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioners fail to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel their bail without any further reference to this Court.

The application for bail being CRM (NDPS) 100 of 2022 is, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Ajoy Kumar Mukherjee, J.) (Tapabrata Chakraborty, J.)