

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

12.05.2022

Court No.01
rpan /35

C.R.M. (NDPS) 114 of 2022

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

And

In Re.: Phulchand Barman

- Petitioner

Mr. Arjun Chowdhury,
Ms. Pratusha. Dutta Chowdhury,
Mr. Bikaash Singh
... for the petitioner.

Mr. Abhijit Sarkar,
Mr. Tapan Bhattacharjee
... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Sitai Police Station Case No. 148 of 2020 dated 07.12.2020 under Sections 353/188 of the Indian penal Code read with Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Chowdhury, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody for more than 526 days and there is no possibility towards conclusion of the trial in the near future. The delay which has occurred is not attributable to the petitioner as the prosecution witnesses were not appearing before the learned court below.

In view of such submission, we directed the State to file a report as regards the stage of the proceedings. Pursuant to such direction a report has been filed. Let the same be kept on record.

A perusal of the report reveals that charge was framed on 26th July, 2021. The matter was fixed for evidence on 21st August, 2021 and prosecution witness appeared but the learned advocate for the petitioner declined to proceed. Thereafter on 27th September and 9th December, 2021 no prosecution witness turned up. The next date was fixed on 18th January, 2022 when the court was not functioning due to resolution of the Bar Association.

In the backdrop of such facts it cannot be said that the delay which has occurred is totally attributable to the State.

Considering the fact that the contraband substance above commercial quantity was recovered from the possession of the petitioner and the statutory restrictions are attracted, we are not inclined to exercise discretion in his favour and his prayer for bail is refused at this stage.

We have been informed that there are total eight witnesses. In view thereof, we direct the learned court below to expeditiously conduct the trial and if necessary, upon resorting to steps available under Section 309 of the Code, so that the logical conclusion of the case may be reached at the earliest, preferably within a within a period of six months.

It is made clear that in case the prosecution witnesses do not appear on the dates specified, the learned court below would be at liberty to take steps, in accordance with law, to ensure their presence.

The application for bail, being CRM (NDPS) 114 of 2022 is, thus, 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.)