

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

06.05.2022
Court No.01
Item No.25
Avijit Mitra

CRM (NDPS) 128 of 2022

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

And

In Re: Mansur Ali & anr.

...Petitioners

Ms. Jeenia Rudra

....For the petitioners

Mr. Arun Kumar Sarkar,

Mr. Sourav Ganguly

...For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with New Jalpaiguri Police Station Case No.801 of 2017 dated 29.09.2017 under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Ms. Rudra, learned advocate appearing for the petitioners submits that the petitioners have been falsely implicated. There had been an alleged recovery of 7. 865 kg, 7.365 kg and 6.565 kg of ganja from the respective possession of three persons including the petitioners. The total quantum of contraband allegedly recovered being 21.795 kg was thus marginally above the commercial quantity.

She submits that the petitioners have already suffered long incarceration for about five years. There is also no possibility towards conclusion of the trial in the near future.

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 submits that contraband substance above commercial quantity was recovered from the joint possession of the petitioners and one Sanjay Mazumder and as such the statutory restrictions are attracted. 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.

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 total quantum of contraband substance (21.795 kg of ganja) recovered from the petitioners

herein and another, is marginally above the intermediate quantity.

From the order passed by the learned Special Court it appears that out of fourteen witnesses only four had been examined. The petitioners cannot be held responsible for the delay, which has occasioned. They are languishing in custody for about five 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/- (Rupees Ten thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the concerned learned Judge Special Court (Under NDPS Act), 2nd Court, Jalpaiguri in connection with NDPS Case No. 47 of 2017 with a further condition that the petitioner no. 1 shall not leave the jurisdiction of New Jalpaiguri Police Station and the petitioner no. 2 shall not leave the jurisdiction of Pradhan Nagar Police Station until further orders save and except for attending the learned trial court below on all the dates as specified for hearing.

It is further directed that the petitioner 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 thier bail without any further reference to this Court.

The application for bail being CRM (NDPS) No.128 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.)

