

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

12.05.2022
Court No.01
rpan /30

CRM (NDPS) 158 of 2022

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

And

In Re: Jabdul Hossen @ Jabdul Hossain

...Petitioner.

Mr. Jaydeep Kanta Bhowmik

.... for the petitioner.

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 Jaigaon Police Station Case No.237 of 2016 dated 25.08.2016 under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Case no.32 of 2016].

Mr. Bhowmik, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody on and from 26th August, 2016 and 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 petitioner is not necessary.

Mr. Ganguly, learned advocate appearing for the State opposes the petitioner's 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. Answering our query, he submits that 22.1 Kgs. of ganja was recovered from the possession of the petitioner 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 petitioner was, *prima facie*, guilty of the accusations made against him. The petitioner has 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 petitioner has any antecedent or is involved in any money trail pertaining to narcotic trade.

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

The petitioner cannot be held responsible for the delay, which has occasioned. He is languishing in custody for more than 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 petitioner.

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 petitioner is not warranted.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), 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. 32 of 2016 with a further condition that the petitioner shall not leave the jurisdiction of Jaigaon 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 petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

The application for bail being CRM (NDPS) No.158 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.)