

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

12.05.2022
Court No.01
rpan / 43

CRM (NDPS) 161 of 2022

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

In re: Moksedul Alam
- petitioner

Mr. Sudhindra Das
... for the petitioner.
Mr. Abhijit Sarkar,
Mr. Biswarup Roy
... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Jalpaiguri Kotwali Police Station Case No.774 of 2017 dated 07.11.2017 under Sections 379/411/413/34 of the Indian Penal Code read with Section 20(b) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (corresponding to NDPS Case No.50 of 2017);

Mr. Das, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody since 7th November, 2017. On the said date, along with the petitioner four other persons were also arrested. The accused persons were travelling in three motor cycles. The amount of contraband substance recovered from the said vehicles was 22.3 kgs. of ganja. The petitioner along with one Sahajat Alam was riding in one motor cycle from which, allegedly 8.5 kgs. of

ganja was recovered. One co-accused person, namely, Kasimuddin Md., who is similarly situated with the petitioner, had been granted bail by a coordinate Bench of this Court by an order dated 19th April, 2022 in CRM (NDPS) No.64 of 2022 despite the statutory restrictions and considering his long detention of four and half years and as there was no possibility towards conclusion of the trial in the near future, since by that time only one witness had been examined.

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 petitioner is not necessary.

Answering our query, Mr. Sarkar, learned advocate appearing for the State submits that subsequent to 19th April, 2022, when bail was granted to Kasimuddin Md., there had been no progress in the trial and that in total there are fifteen witnesses.

He further submits that the period of delay stands intervened by a period lost due to the pandemic and it cannot be said that entire period of delay is totally attributable to the State.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

A co-accused, namely, Kasimuddin Md., who appears to be similarly situated with the petitioner, had already been granted bail by a co-ordinate Bench of this Court.

From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay, which has occasioned. He is languishing in custody since 7th November, 2017 and there is no possibility towards conclusion of the trial in the near future.

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 and as a similarly situated co-accused person had already granted bail by a Coordinate Bench of this Court, we are of the opinion that further detention of the petitioner, who is in custody since 7th November, 2017, is not warranted.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court (under the NDPS Act), Jalpaiguri with a further condition that he shall not leave the jurisdiction of Matigara 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 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.161 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.)