

13.09.2022

Item No.13

Ct.No.1

K.B/b.r.

Allowed

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Appellate Jurisdiction

C.R.M.(NDPS) 276 of 2022

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure filed in connection with N.D.P.S. Case No. 31 of 2017 arising out of NCB Crime No. 30/NCB/KOL/2017 for alleged offence punishable under Sections 8(b) and 8(c) read with Section 20(a)(i) and 20(b)(ii)(c) of the NDPS Act, 1985.

And

In the matter of : **Kalipada Ray @ Roy**

... Petitioner.

Mr. Sandip Dutta
Ms. Madhushri Dutta

... for the petitioner

Mr. Sudipto Kumar Mazumder, Ld. A.S.G.
Mr. Ratul Banik

..... for the UOI (NDPS)

Mr. Sandip Dutta, Learned Counsel, appears with Ms. Madhushri Dutta, Learned Advocate.

The petitioner seeks bail in connection with N.D.P.S. Case No. 31 of 2017 arising out of NCB Crime No. 30/NCB/KOL/2017 for alleged offences punishable under Sections 8(b) and 8(c) read with Section 20(a)(i) and 20(b)(ii)(c) of the NDPS Act, 1985 now pending before the Learned Additional Sessions Judge (Under NDPS Act), 1st Court, Jalpaiguri.

Mr. Dutta submits that although the case has been registered in 2017, out of a total six witnesses, only one witness has been completely examined in 2019 and the examination of the second witness for the prosecution has commenced only in 2022. It is further submitted that the examination of PW-2 has not yet been completed.

It is also submitted that the petitioner is in custody for the past five and half years. The prayer for bail is founded on the long on the incarceration of the petitioner read with the inordinate delay in proceeding with the trial.

On behalf of the Respondents/NCB, Mr. Sudipto Kumar Mazumder, Learned Counsel, appears with Mr. Ratul Banik, Learned Advocate.

It is submitted that due to certain personal reasons attributed to the witness for the prosecution such as bereavement in the family of the prosecution witness No.2, the evidence before the Learned Trial Court was delayed.

Such delay is completely inadvertent and therefore a direction be given to the Learned Trial Court to expedite the trial.

Having heard the parties and considering the materials placed, this Court is of the view that the observations of the Coordinate Division Bench in CRM No. 3484 of 2021 *vide* its order dated 9th of November, 2021 has *pari materia application* to the facts of this case.

The Hon'ble Division Bench in its order passed in CRM 3484 of 2021, which is annexed at Page-23 of this application, has observed that the restriction imposed under Section 37 of the NDPS Act stands rebutted on the ground of long delay in completion of the trial. The Hon'ble Division Bench has relied on the principle enunciated by the Hon'ble Apex Court in the above aspect.

Accordingly, this Court is of the view that the petitioner deserves to be granted the privilege of 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 learned Additional Sessions Judge, 1st Court (under the Narcotic and Psychotropic Substance Act, 1985), Jalpaiguri.

The petitioner shall appear before the Learned Trial Court on each and every date of hearing, until further orders and shall also not influence the evidence in any manner whatsoever. The petitioner shall also remain within the jurisdiction of Sonapur Police Station, except for attending the trial before the Learned Trial Court.

The application for bail, being **CRM (NDPS) 276 of 2022**, stands thus **allowed**.

All parties shall act on the server copy of this order, duly obtained from the official website of the Hon'ble High Court Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)