

25.01.2023

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Allowed

C.R.M. (NDPS) No. 104 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Haroa Police Station Case No. 347 of 2020 dated 03.10.2020 under Sections 21(c) of the N.D.P.S. Act.

And

In Re : Chhoto Molla alias Chhoto petitioner

Mr. Angshuman Charkaborty

.....for the petitioner

Mr. Sanjoy Bardhan

Mr. Palash Chandra Majhi

.....for the State

Learned Counsel for the petitioner submits petitioner is in custody for about two and half years. It is also submitted that there is inordinate delay in trial. No witness has been examined till date.

Learned Counsel appearing for the State opposes the prayer for bail and submits prosecution is not responsible for the delay as on a number of occasions the court was lying vacant.

We have considered the materials on record. Though court was lying vacant on some dates, it is evident prosecution failed to produce witness for examination on other dates. Initially charge-sheet was filed without chemical examiner's report. In view of the aforesaid materials on record we are of the opinion there has been inordinate delay in trial which has infringed the fundamental right to speedy trial of the petitioner

under Article 21 of the Constitution of India. Bail prayer of the petitioner on the ground of breach of fundamental right of the petitioner under Article 21 of the Constitution of India is not fettered by the statutory restrictions under Section 37 of the NDPS Act. Accordingly, we are inclined to grant bail to the petitioner.

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 NDPS Act, Barasat, North 24 Parganas, subject to conditions that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event he fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)