

06.04.2023
Sl. No.1
[Rejected]

C. R. M. (NDPS) 105 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 18.01.2023 in connection with Entally Police Station Case No.366 dated 27.11.2019 under Sections 20(b)(ii)(c)/29 of the NDPS Act. (NDPS Case No.101 of 2019)

And

In Re: **Joydeb Das**

	 Petitioner
Mr. Debasis Kar	 for the petitioner
Mr. Rudradipta Nandy .. Id. Addl. Public Prosecutor	
Mr. Sanjoy Bardhan	
Ms. Baisakhi Chatterjee	 for the State

It is submitted on behalf of the petitioner that he has been falsely implicated in the instant case. There is no video recording of the seizure proceeding. Co-accused is on interim bail. Accordingly, he prays for bail on parity.

On the earlier occasion when the matter was taken up for hearing, it was contended on behalf of the State petitioner stands on a different footing from the co-accused who is on bail. This Court also noted delay was engineered through prayers for deferment at the behest of accused.

To test the bonafides of the parties, we adjourned the hearing of the bail application and directed prosecution witnesses to be examined in course of the next schedule i.e. from 29.03.2023 to 31.03.2023.

Report is placed on record. Five prosecution witnesses appeared and were examined in chief. On the ground that the defence lawyer was unwell, adjournment was sought. Next date has been fixed from 17.04.2023 to 19.04.2023.

Learned Advocate for the petitioner argues the bail application on merits. He contends video recording of seizure proceedings were not made. He refers to *In Re. : Kalu Sk. & Ors.*¹.

Recovery in the present case was in November, 2019. Noticing the absence of transparency in recovery proceedings this Court on 22.06.2022 in *Kalu Sk.* (Supra) directed video recording of recovery proceedings in narcotic cases. In view of the nature of direction, it is to be assumed that compliance thereof is prospective. Hence, validity of a recovery of narcotics in 2019 cannot be called into question in view of absence of video recording.

On the other hand, evidence has come on record through prosecution witnesses that narcotics above commercial quantity was recovered firstly from the petitioner and thereafter from his residence. In view of ample evidence on record showing possession of narcotics above commercial quantity from the personal possession of the petitioner, we are constrained to observe he does not stand on the same footing with co-accused who has been enlarged on bail.

On the issue of delay in trial we note all efforts were made by the prosecution to produce and examine witnesses in the course of the schedules fixed. Delay was due to adjournment for cross-examination on the part of defence. On one occasion, it was on the ground of ailment in the family of the defence lawyer and thereafter on his own ailment. The conduct of the defence shows a calculated design to delay and dilate the proceeding. Enlargement of the petitioner on bail prior to conclusion of prosecution evidence would be detrimental for smooth and prompt conclusion of trial.

¹ MANU/WB/0901/2022

For these reasons, we do not consider the bail prayer of the petitioner till the entire prosecution evidence is complete.

Under such circumstances, the application for bail is rejected.

After the disposal of the bail application, prayer is made on behalf of the petitioner that his prayer to recall the prosecution witnesses for cross-examination which is pending before the trial court be allowed.

Cross-examination is a vital tool to elicit truth. Though we do not appreciate the dilatory tactics adopted by the defence lawyers, accused ought not to be denied fair trial on such score. Hence, we propose to give a last opportunity to the petitioner and co-accused to cross-examine the prosecution witnesses whose evidence was closed in the course of the last schedule.

We direct the prosecution to produce the said witnesses (whose evidence has been closed) again in course of the next schedule i.e. from 17.04.2023 to 19.04.2023 in addition to other witnesses who are proposed to be examined. Defence lawyers shall positively cross-examine all the recalled witnesses in the course of the next schedule. No further indulgence shall be given to the defence in that regard.

Trial court shall try to conclude the recording of prosecution evidence in course of next schedule and if it is unable to do so, positively within two months thereof by fixing schedules at regular intervals. In the event, prosecution witnesses are present, no adjournment shall be given on the ground of cross-examination.

Parties shall communicate a copy of this order to the trial court for due compliance.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

