

02.02.2023.
18.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 155 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with N Case No.100 of 2021 arising out of Basirhat P. S. Case No.561 of 2021 dated 08.08.2021 under Sections 21(c) of the NDPS Act.

In the matter of : Surojit Biswas @ Pakhi.

.... Petitioner.

Mr. Kushal Kr. Mukherjee,
Mr. Surajit Basu,
Mrs. Ranu Mondal.

...for the Petitioner.

Mr. Sanjoy Bardhan,
Mr. Palash Ch. Majhi.

...for the State.

Petitioner is in custody for over 500 days. He submits chemical examiner's report was not a part of the police report filed. Till date, chemical examiner's report has not been filed.

Learned Advocate for the State opposes the bail prayer. He submits date has been fixed for submission of chemical examiner's report in March, 2023.

We have considered the materials on record. Petitioner is in custody for more than 500 days. It would be argued that a charge sheet sans chemical examiner's report is an incomplete one. Without going into such issue, we note that the chemical examiner's report has not been filed even after 365 days of detention i.e. the maximum period of detention which the investigating agency could have prayed for under the proviso of Section 36A(4) of the NDPS Act.

This demonstrates clear indolence and indifference in the matter of investigation which includes chemical examination of samples. Right to speedy justice under Article 21 of the Constitution of India is not restricted to the matter of trial but extends to investigation also. There is clear infraction of the said fundamental right in the facts of the case. This entitles the petitioner to bail. Needless to mention bail prayer of the petitioner on such ground is not fettered by Section 37 of the NDPS Act.

Accordingly, the petitioner viz., Surojit Biswas @ Pakhi 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 N.D.P.S. Act, Barasat, North, 24-Paraganas subject to condition 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 the petitioner 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.

This application for bail is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)

