

29.08.2023
Sl. No.2
akd
[ALLOWED]

C. R. M. (NDPS) 207 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 02.02.2023 in connection with Bankura Police Station Case No.235 of 2022 dated 14.06.2022 under Section 21(b) of the NDPS Act and Section 27 of the Drugs and Cosmetics Act, 1940. (NDPS Case No.21 of 2022)

And

In Re: ***Ali Mahammad Khan @ Rintu***

... .. Petitioner

Mr. Soumik Ganguli
Mr. Sourat Nandy

... .. for the petitioner

Mr. Sudip Ghosh
Mr. Bitasok Banerjee

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for more than a year. Chemical examiner's report has not yet been filed. Accordingly, he prays for bail.
2. Learned Advocate for the State upon instruction submits that he needs further time to submit chemical examiner's report.
3. We have considered the materials on record. Without going into the issue whether police report sans chemical examiner's report can be termed as a complete police report under Section 2(r) of the Code of Criminal Procedure, we note inspite of detention of the petitioner for more than a year, chemical examiner's report has not been filed. It is not possible for a court to proceed with the trial particularly to frame charge without the chemical examiner's report. Delay in the matter is therefore, due to failure to supply chemical examiner's report which is the most vital piece of evidence in a matter relating to possession of narcotics. Right to speedy trial under Article 21 of the Constitution of India extends to investigation as well as enquiry.

4. Under such circumstances, we are of the opinion non-furnishing of chemical examiner's report while the petitioner remained incarcerated for about 442 days is an infraction of his fundamental right to speedy trial and he is entitled to bail on this score. Bail prayer on the ground of inordinate delay in trial is not fettered by restrictions under Section 37 of the NDPS Act. Reference in this regard may be made to ***Rabi Prakash vs. The State of Odisha***¹.
5. Therefore, the accused/petitioner, namely ***Ali Mahammad Khan @ Rintu***, be released on bail upon furnishing 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 Judge, Special Court, under the NDPS Act-cum-Additional Sessions Judge, 1st Court, Bankura subject to condition that the said petitioner 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 or commit similar offences in future.
6. 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 automatically without reference to this court.
7. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ SLP (CrI) No. 4169 of 2023. Order dated 13.07.2023