

16.02.2023
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allowed

CRM(NDPS) No. 278 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Anandapur Police Station Case No. 283 of 2017 dated 24.11.2017 under Sections 21(c)/29 of the NDPS Act.

And

In Re : Ashfaque Ahamed petitioner

Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Soubhik Mitter
Mr. Sayan Mukherjee
.....for the petitioner

Mr. Sanjoy Bardhan
Mr. Palash Chandra Majhi
..... for the State

Learned Counsel for the petitioner submits he is in custody for more than five years. There is inordinate delay in trial. He prays for bail.

Learned Counsel for the State opposes the prayer for bail and submits delay is not due to indolence of the prosecutor. Initially State Drug Laboratory gave a negative report. Subsequently sample was sent to the Central Forensic Laboratory and a positive report was submitted. Charges were framed in 2009. Four out of eight witnesses have already been examined. Report submitted by him is placed on record.

We have considered the materials on record. Petitioner was arrested in 2017. Initial chemical examiner's report was negative. Subsequently samples were sent to CFSL and the report showed presence of narcotics. Accordingly, charges were framed in May,

2019. Trial proceeded in a tardy manner and three witnesses were examined when this Court had turned down the bail prayer of the petitioner in June, 2022. Since then only one witness has been examined. Delay was either due to non-examination of witnesses or absence of judicial officer. In no case, course of delay can lie at the doorstep of the accused. Petitioner has undergone detention for more than five years. Four more witnesses are yet to be examined. There is little possibility of trial concluding in the near future. Under such circumstances, we are of the opinion petitioner is entitled to seek bail on the ground of infraction of his right to speedy trial. Bail prayer of the petitioner on such score is not fettered by 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 and Additional Sessions Judge, 12th Court, Alipore, 24 Parganas (South), on further conditions that while on bail the petitioner shall remain within the jurisdiction of South Port Police Station until further orders except for the purpose of attending court proceeding and shall provide the address where he shall presently reside to the investigating agency and the court below and shall report to the Officer-in-Charge of the said Police Station once in a week until further orders. Petitioner shall appear before the trial court on every date of hearing until further orders and

shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the trial court without 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.)