

C. R. M. (NDPS) 1448 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 18.08.2023 in connection with N. 197/2015 arising out of F. No. SI (VII) 197/2015 AIU under Sections 20(c)/23/8 of the NDPS Act.

And

In Re: **Sri Pawan Kumar**

... .. Petitioner

Mr. Angshuman Chakraborty
Mr. Shashanka Shekhar Saha

... .. for the petitioner

Ms. Rajashree Venkat Kundalia

... .. for the AIU [Air Intelligence Unit]

1. It is submitted on behalf of the petitioner that he is in custody for about eight years. It is further submitted there is inordinate delay in trial. Accordingly, he prays for bail.
2. Report is placed on behalf of the Customs authority. From the report it appears six out of eight witnesses have been examined.
3. We have considered the materials on record. Petitioner is in custody for about eight years. Six out of eight witnesses have been examined till date. Prosecution makes prayer to examine the Godown-in-charge of the Malkhana at Customs House. This will entail further delay in the matter. Delay in the matter cannot be attributed to the petitioner. Under such circumstances, we are of the opinion petitioner has been able to make out a case of breach 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.

¹ 2023 SCC OnLine SC 1109

1. Therefore, the accused/petitioner, namely ***Sri Pawan Kumar***, be released on bail upon furnishing bond of Rs.25,000/- (Rupees Twenty-five 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 District Judge, 6th Court, Barasat, North 24-Parganas 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 and on further condition that the petitioner, while on bail, shall remain within the district of North 24-Parganas and shall provide the address where he shall presently reside to the Customs authority as well as the court below and shall report to the Superintendent of Customs (Preventive), AIU Cell, NSCBI Airport, Kolkata-700052 or his representative once in a week until further orders.
4. 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.
5. The application for bail, thus, stands allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)