

14.09.2023

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Allowed

C.R.M. (NDPS) No. 1520 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure arising out of English Bazar Police Station Case No. 603 of 2021 dated 24.05.2021 under Sections 21(c)/29 of the N.D.P.S. Act.

And

In Re : Md. Pintu Sk. & Anr. petitioners

Mr. Arup Kumar Bhowmick
.....for the petitioners

Mr. Sanjoy Bardhan
Ms. Baishakhi Chatterjee
.....for the State

1. Learned Counsel for the petitioners submits they are in custody for two years and four months. There is delay in trial. They pray for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits one witness has been examined. Petitioners had prayed for deferment of cross-examination of the said witness which has contributed to delay.

3. We have considered the materials on record. Bail is prayed on behalf of the petitioners on the ground of delay in trial. Petitioners are incarcerated for two years and four months. Only one out of eleven witnesses has been examined. Though petitioners had prayed for deferment of cross-examination on a single day, perusal of the ordersheet shows on a number of days witnesses were absent. Delay in the trial is

primarily on the ground of laxity of the prosecution and the petitioners are not responsible for the same.

4. In this backdrop we are constrained to observe their fundamental right to speedy trial has been infringed and they are 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. State of Odisha*¹. Hence, we are inclined to grant bail to the petitioners.

5. Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- each 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, Malda, subject to conditions that petitioners 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.

6. In the event petitioners fail to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

7. The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC Online SC 1109

