

26.09.2023
Sl. No.8
akd
[ALLOWED]

C. R. M. (NDPS) 1541 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 13.09.2023 in connection with Belghoria Police Station Case No.586 of 2019 dated 26.08.2019 under Sections 20(b)(ii)(c)/29 of the NDPS Act. (NDPS Case No.98 of 2019)

And

In Re: ***Rohit Kumar @ Vishnoi***

... .. Petitioner

Ms. Ashima Mandla
Ms. Anwasha Halder
Mr. Surya Pratap Singh

... .. for the petitioner

Mr. Sanjay Bardhan
Ms. Debjani Dasgupta

... .. for the State

1. It is submitted on behalf of the petitioner that recovery is not in accordance with law. Independent witnesses have not signed the seizure list. There is non-compliance of Section 42(2) of the NDPS Act. It is contended sample drawn before the Magistrate had not been signed for chemical examination. Hence, there is no compliance of Section 52A of the NDPS Act also. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail.
3. We have considered the materials on record. Signatures of independent witnesses appear in the seizure memo prepared at the time of recovery. Their statements were also recorded during investigation. Absence of signature on the arrest memo must be seen in the light of the aforesaid materials on record probalising the presence of independent witnesses during seizure.
4. Seizure was made from a vehicle while it was on public road. A Gazetted officer was also present during recovery. Applicability of

Section 42(2) of the NDPS Act to the seizure requires to be assessed in the backdrop of the aforesaid circumstances during trial. Alleged defect with regard to Section 52A of the NDPS Act may be addressed during trial.

5. However, petitioner appears to have made out a case for bail on the ground of delay. He is in custody for more than four years. Only five witnesses have been examined till date. Prosecution has cited fourteen witnesses in the charge sheet and we are informed they propose to examine twelve witnesses in all. There is little possibility of trial concluding in the near future. Delay in the matter cannot be attributed to the petitioner.
6. 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 however, subject to strict conditions. 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. Therefore, the accused/petitioner, namely ***Rohit Kumar @ Vishnoi***, 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, Barrackpore, 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

¹ 2023 SCC OnLine SC 1109

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 Investigating Agency as well as the court below and shall report to the Officer-in-charge of the police station concerned within whose jurisdiction he shall presently reside once in a week until further orders.

7. 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.
8. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)