

01.11.2023
Court No.8
(D/L 07)
(AK)

CRM (NDPS) 1778 OF 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 25.10.2023 in connection with Goalpokher Police Station Case No. 71 of 2022 dated 16.02.2022 under Section 21(c) of the N.D.P.S. Act, 1985.

And

In the matter of: **Veer Bhan singh and another**

... Petitioners.

Ms. Radhika Agarwal
Mr. Dhiraj Lakhotia

... for the petitioners.

Mr. Swapan Banerjee
Mr. Suman De

... for the State.

1. Learned counsel for the petitioners contends that there are several violations which mitigate the circumstances as contemplated under Section 37 of the NDPS Act.
2. First, it is contended that the seized articles were sent for certification after a prolonged period of about 155 days of seizure.
3. Secondly, there are violations of Section 42, sub-Sections (1) and (2) of the NDPS Act as the vehicle of seizure was a private vehicle.
4. Thirdly, it is argued that the FSL report has not been submitted at the relevant point of time.
5. Learned counsel for the State vehemently opposes the prayer for bail and contends that five out of the total nine witnesses have already been examined.

6. Learned counsel for the State seeks some time to take appropriate instructions regarding whether the FSL report was submitted at all.

7. However, we find from the materials on record that undisputedly, the petitioners are in custody for about 622 days.

8. It is further found that whereas the seizure took place on February 16, 2022, which is apparent from the seizure list annexed to the present application, the date of certification, which is also apparent from the annexures to the present application, was July 21, 2022.

9. Such prolonged delay in sending the samples for certification itself is a mitigating factor for the rigours of Section 37. That apart, since the petitioners are already in custody for a prolonged period, we find that there is no further need for custodial trial.

10. In any event, the long period of incarceration of the petitioners have already mitigated the circumstances as raised under Section 37 of the NDPS Act in view of the settled legal position prevalent now governing the issue.

11. Hence, CRM (NDPS) 1778 of 2023 is allowed, thereby granting bail to the petitioners on condition that the petitioners furnish individual 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 (NDPS), at Raiganj, Uttar Dinajpur. The sureties may be common in respect of the petitioners.

12. The petitioners shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date.

13. The petitioners shall not make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

14. It is made clear that in the event some exigency prompts the petitioners to leave the territorial jurisdiction of the trial court, it will be open to the petitioners to take leave of the jurisdictional court for such purpose.

(SABYASACHI BHATTACHARYYA, J.)

(PARTHA SARATHI CHATTERJEE, J.)