

17 01.11.2023
rkd/ Ct. No.08
cp

C.R.M. (NDPS) No. 1788 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Maidan** P.S. Case No. **76** of **2021** dated **26/09/2021** under Sections **20(b)(ii)(c)/29** of the NDPS Act.

And

In the matter of: - Sanjay Sriwastava & anr.

....petitioners.

Mr. Subhendu Roy Chowdhury,
Ms. Shila Chatterjee

...for the petitioners.

Mr. Swapan Banerjee,
Ms. Purnima Ghosh

...for the State.

1. The petitioners pray for bail on the ground that the petitioners are already in custody for more than two years. It is argued that the charge-sheet was filed on March 21, 2022 and the charges were framed in the month of November, 2022.
2. Although the petitioners themselves suffered from a refusal of bail on February 7, 2022, at that stage the charge-sheet had not yet been filed. It is argued that the trial is being delayed inordinately and only one out of nine witnesses has been examined as yet.
3. Learned counsel for the State opposes the prayer for bail and submits that the rigour of Section 37 of the NDPS Act is

squarely applicable. It is contended that the trial judge was absent for a considerable period, for which the trial could not take place. It is argued that the next date of trial is fixed on November 18, 2023 and it is expected that the trial will be concluded by the end of this year.

4. It is harped on by the learned counsel for the State repeatedly that the quantity of contraband article recovered was much more than the commercial quantity, being above 34 kgs.
5. We find from the order-sheet of the trial court as annexed to the writ petition that it was recorded in the order dated March 17, 2023, that the Presiding Officer was on leave for which the learned Additional District Judge, Fast Track Court was in charge. Thereafter, however, on several dates, the matter was taken up but the trial could not proceed substantially.
6. We find from the annexure to the petition that on May 8, 2023, June 22, 2023, August 4, 2023, September 14, 2023 as well as on October 7, 2023, the case was taken up but till date only the deposition of one of the prosecution witnesses has been concluded. Hence, we are not confident enough to accept the submission of the State that the trial will be concluded by the end of this year.
7. Accordingly, we do not find any further necessity to keep the petitioners in incarceration and/or for custodial trial of the

matter. The long period of incarceration of the petitioners has sufficiently mitigated the rigour of Section 37 of the NDPS Act.

8. Accordingly, CRM (NDPS) No. 1788 of 2023 is allowed, thereby granting bail to the petitioners on condition that the petitioners furnishes 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 Chief Metropolitan Magistrate, Kolkata. The sureties may be common for each of the petitioners.
9. 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.
10. The petitioners, further, 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.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Chatterjee, J.)

