

21.12.2023
tkm/ct 28
sl no. 6

C.R.M. (NDPS) 1970 of 2023

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with NDPS case no. 201 of 2021 arising out of Seizure Case no. 08/NDPS/CL/Ganja/BCPU/CCP/WB/2021-22 dated 18.9.2021 under sections 20(c)/29 of the NDPS Act
And

Allowed

In Re : Uttam Kumar Roy @Vicky ... petitioner

Mr. T Gupta
Mr. S Bhanja

..... for the petitioner

Mr. Sandip Chakraborty

..... for the State

1. Petitioner is in custody for more than two years. He contends no witness has been examined. He prays for bail.
2. Learned lawyer for the Customs submits date has been fixed for recoding evidence. Delay was on the ground that witnesses had been posted at different places.
3. We have considered the materials on record. Allegation against the petitioner is grave and involves possession of narcotics above commercial quantity i.e. 171.4 kgs of ganja. Though he is in custody for more than two years, no witness has been examined till date. In view of development in technology explanation offered on behalf of the customs that the witnesses have been posted at a far off place do not find favour with us.
4. It is open to the prosecuting agency to arrange for examination of witnesses through video linkage. Petitioner has not contributed to the delay. In this backdrop we are of the opinion fundamental right of the petitioner to speedy justice has been infringed and he is entitled to bail on such score. Bail prayer on the ground of delay is not fettered by restrictions under sections

37 of the NDPS Act. Reference in this regard may be made to *Rabi Prakash vs. The State of Odisha*¹

5. Accordingly, the petitioner be released on bail upon furnishing a bond of Rs. 10,000/- with two sureties of like amount each, one of whom must be local to the satisfaction of the learned Special Judge under NDPS Act-cum-Additional District Judge, 5th Court at Berhampore, Murshidabad on condition that the petitioner shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

6. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

7. The application being CRM (DB) 1970 of 2023 is disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109