

**In the High Court at Calcutta
Circuit Bench At Jalpaiguri
Appellate Side**

28.02.2023
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allowed

CRM (NDPS) No. 168 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Jaigaon Police Station Case No. 226 of 2020 dated 13.09.2020 under Sections 17(c) of the NDPS Act.

And

In Re : Majibul Islam @ Miya @ Mojibul Mia @ Islam petitioner

Mr. Sudhindra Das

.....for the petitioner

Mr. Aditi Shankar Chakraborty, learned APP

Mr. Tapan Bhattacharjee

..... for the State

Learned Counsel for the petitioner submits that he is in custody for about three years. It is also submitted there are two F.I.Rs. over the self-same incident. The house wherefrom recovery was made does not belong to him. There is inordinate delay in trial. No chemical examiner's report has been filed and charge has not been framed as yet.

Learned Counsel for the State opposes the prayer for bail.

We have considered the materials on record. Submission of the learned Counsel for the petitioner with regard to the merits of the case requires to be assessed in the course of the trial. However, we note there is inordinate delay in the matter. Petitioner is in custody for about two and half years. However, chemical examiner's report has not been filed till today and charge

has not been framed. This inordinate delay infracts the fundamental right to speedy trial of the petitioner under Article 21 of the Constitution of India. Bail prayer on the ground of delay is not fettered by Section 37 of the NDPS Act. Accordingly, we are inclined to grant bail to the petitioner.

Accordingly, we direct that the petitioner shall 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 Additional Session Judge, 2nd Court at Jalpaiguri, subject to the condition that the petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

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

The application for bail is, accordingly, allowed.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)