

05.06.2023
Court No.01
Item No. 13
Allowed
sg

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

CRM (NDPS) 211 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Birpara Police Station Case No. 32 of 2021 dated 10.03.2021 under Sections 20(b)(ii)(c) of the NDPS Act.

And

In Re: **Biswajit Sarkar**

Petitioner

Mr. Arnab Saha

For the Petitioner

Mr. Nilay Chakraborty
Mr. Sourav Ganguly,

For the State

Mr. Arnab Saha, learned Counsel representing the petitioner has submitted that the petitioner was apprehended on 10th March, 2021 and he was produced on 11th March, 2021. Since then, the petitioner is in custody without there being any progress in the trial. He has further submitted that an incomplete charge-sheet was filed on 7th March, 2022 without chemical examination report even after the extension of statutory period of 180 days and only on 10th March, 2023 a supplementary charge-sheet has been filed with the chemical examination report. Mr. Saha further submitted that in view of the decision of the Special bench in *Subhas Yadav & Ors. vs. State of West Bengal* reported in *2023 SCC OnLine Cal 313*, the petitioner is entitled to statutory bail.

The prayer for bail has been opposed on behalf of the State. It is submitted that the supplementary charge sheet filed on 10th March, 2023 would show that

narcotic substance above commercial quantity was recovered from the custody of the petitioner.

It is an admitted position that an incomplete charge sheet was filed and FSL report was filed beyond the extended period.

It appears that following decision in *Subhas Yadav & Ors.* (supra), several coordinate Benches granted bail on a finding that an incomplete charge-sheet was filed and there has been no explanation offered for not filing the FSL even within the extended period granted by the Court. Right to speedy and fair trial is a constitutional right to an accused and it has been reiterated in several judgments of the Hon'ble Supreme Court including the case of ***Satendra Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51***, the Hon'ble Supreme Court while dealing with the issue of prolonged incarceration of an accused pending trial have observed as follows:

“86.... We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provisioning. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply within the directions of this Court to

expedite the process and also a stricter compliance of Section 309 of the Code”.

It has been stated that the fundamental right may override the non-obstante clause of Section 37 of the NDPS Act having regard to the law laid down by the Special Bench in *Subhas Yadav & Ors.* (supra), we are inclined to grant bail to the petitioner.

Paragraph 31(6) of *Subhas Yadav* is set out as follows:

“Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e. (a) there is appreciable progress in the investigation and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband in an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter-state/trans-border trafficking, criminal antecedes of the accused giving rise to possibility of recidivism, ascendance of co-accused, etc., constituting ‘specific reasons’ justifying further detention, the Court may be inclined to extend the period of detention and deny liberty.” (emphasis supplied)

We direct that the petitioner, namely, Biswajit Sarkar shall be released on bail upon furnishing a bond of Rs.20,000/-, with two sureties of Rs.10,000/- each, one of whom must be local, to the satisfaction of the learned Special Judge under NDPS Act with a condition that the petitioner will not leave the jurisdiction of the Trial Court without prior permission of the Special Court. The petitioner shall

be present at the time of framing of charge and in the event the charge is framed, he shall be present on each and every date of trial as may be directed by the Special Court, failing which, the bail granted shall stand automatically canceled without any further reference to this Court.

The application for bail of the petitioner is allowed. CRM (NDPS) 211 of 2023 is accordingly, disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J)

(Soumen Sen, J)