

02.03.2023
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**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

C.R.M. (NDPS) 241 of 2023

In Re : An application for of bail under section 439 Cr.P.C in connection with Jalpaiguri Kotwali PS case no. 632 of 2021 dated 29.11.2021 under section 20(c) of the NDPS Act

And

Allowed

In re : Ranjit Das

..... petitioner

Mr. Suorav Ganguly

Ms. S Debnath

..... For the petitioner

Mr. Kallol Acharjee

Mr. D Sil

..... For the State

Petitioner submits he was arrested on 29.11.2021. Statutory period of detention i.e. 180 days expired on 29.5.2021. Prior to the expiry of statutory period of detention i.e 180 days report of the Public Prosecutor seeking extension of period of detention under the proviso to section 36A(4) of the NDPS Act was filed on 20.5.2022. No order extending the period of detention was passed. On 10.6.2022 petitioner prayed for statutory bail. As the trial court did not pass any order on the report of the Public Prosecutor or on the prayer for statutory bail, the petitioner had approached this court for bail in CRM (NDPS) 178 of 2022. By order dated 16.6.2022 a co-ordinate Bench of this court disposed of the application directing that application for extension of period of detention be disposed of first. However, no order was passed by the trial court and on 19.7.2022 charge sheet was filed and cognizance was taken. Under such circumstances, petitioner prays for bail.

Learned lawyer for the State opposes the bail prayer. He submits prayer for extension was filed prior to the petitioner

invoking statutory bail. Failure of the court to dispose of the said application cannot prejudice the prosecution.

We have considered the materials on record. Petitioner was arrested on 29.11.2021. The statutory period of detention i.e. 180 days expired on 29.5.2022. It is true report of the Public Prosecutor was filed prior to the petitioner seeking statutory bail. Hence, his prayer for statutory bail does not crystallize till the said application was disposed of. However, the application was kept pending for about two months. In the meantime, the petitioner approached this court in CRM (NDPS) 178 of 2022 for bail. Co-ordinate Bench of this court directed the trial court to dispose of the application for extension of detention as expeditiously as possible. But to no avail. In the meantime police report has been filed and cognizance has been taken. Delay in disposing of the application for statutory bail was by the trial court. It ought not prejudice the petitioner. In *Subhas Yadav vs. State of West Bengal*¹ a Special Bench of this Court held it is the duty of the Court to dispose of a prayer for extension of detention at the earliest. This mandate has been flagrantly violated in this case and has prejudiced the petitioner. We have also examined the reasons for seeking extension of period of detention as per the report of prosecutor. Primary reason canvassed therein is non-availability of chemical examiner's report. Vague averments with regard to abscondence have also been pleaded. Mere residence of the petitioner in a different district cannot be a ground to infer abscondence. Accordingly, we are satisfied if the report of extension had been taken up for consideration on merits, the reason canvassed therein i.e. non-availability of chemical examiner's report would not justify further extension of detention in view of the law declared in *Subhas Yadav vs. State of West Bengal (supra)*. Hence, we are of the view that the petitioner may be released on bail.

¹ 2023 SCC OnLine Cal 313

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 Judge, Special Court under NDPS Act cum Additional Sessions Judge, 2nd court, Jalpaiguri 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.

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.

The application being CRM (NDPS) 241 of 2023 is disposed of.

(Subhendu Samanta,J.)

(Joymalya Bagchi, J.)