

05.06.2023
Court No.01
Item No. 38
Allowed

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

sg

CRM (NDPS) 267 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with N.D.P.S. Case no. 50/2018 dated 27.10.2018 registered at P.S. Kotwali under section 20(b)/25 of the NDPS Act.

And

In Re: **Jyotish Barman**

Petitioner

Ms. Ashima Mendla
Mr. Deborshi Dahr

For the Petitioner

Mr. Aditi Shankar Chakraborty, Ld APP
Mr. Aniruddha Biswas

For the State

The learned counsel for the petitioner submits that the petitioner is languishing in custody for almost four years and seven months without any trial. It is submitted that he was arrested on 27th October, 2018 and the charge-sheet was filed on 25th March, 2019 and thereafter, charges were framed on 5th September, 2019. It is submitted that the petitioner is entitled to fair and speedy trial and is languishing in the custody without any trial and possibility of the trial being concluded in the near future are the considerations which may be taken note of in deciding the application for bail notwithstanding it was earlier rejected on 19th August, 2021.

It appears from the record that the application for bail was rejected by the trial court on 2nd February, 2023. In rejecting the said application, the trial court had noted that since after framing of charges, de-facto complaint was examined

only on 17th January, 2020 and thereafter at least 13 dates were fixed for his further evidence but almost on all occasions in spite of issuance of summons, prosecution failed to produce it and hence, his further evidence could not be proceeded and the accused persons are languishing in custody. However, the prayer for bail was rejected in view of the order passed in CRM 371 of 2019 by the coordinate Bench.

The learned Counsel for the State however, opposes the prayer for bail. It is submitted that the commercial quantity of ganja had been recovered from the possession and custody of the petitioner. Our attention is drawn to the order passed by a coordinate Bench on 19th August, 2021 where the coordinate Bench after taking note of the fact that the petitioner was languishing in custody for about two years and nine months refused to grant bail after taking into consideration Section 37 of the NDPS Act. However, he could not offer any explanation for such slow progress in the trial.

Almost one and half year had passed since the last order of rejection was passed by the coordinate Bench. The question of granting bail to an accused who has suffered custody for four years without even examination of any witness was considered by the Hon'ble Supreme Court in Criminal Appeal No. 1293/2022 in the case of ***Md. Raja & Anr. vs. the State of West Bengal*** decided on 22nd August, 2022. The Hon'ble Supreme Court in allowing the prayer for bail of the accused who have suffered incarceration for four years observed:

“We can't permit the situating to prevail where the person is kept in incarceration for long period of time with the trial hardly to commence.

We are thus of the view that as the period of incarceration is almost four years now and the first witness of the prosecution is yet to be examined, the appellants are entitled to bail on such terms and conditions

as prescribed by the trial court. Ordered accordingly. We also clearly stipulate that the appellants would be required to remain present on all dates fixed by the trial Court and their counsels will not seek unnecessary adjournments. If the appellants seek to delay the trial we permit the trial court to put back the appellants into incarceration.”

Moreover, in *Satender Kumer 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:

“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”.

Subsequently, the Hon’ble Supreme Court in ***Mohd Muslim alias Hussain vs. State (NCT of Delhi)*** decided on 28th March, 2023 have observed that grant of bail on the ground of undue delay in trial cannot be said to be fettered by

Section 37 of the NDPS Act, given the imperative of Section 436A of the Cr.P.C. which is applicable to offences under the NDPS Act too.

Moreover, the prosecution has failed to show any criminal antecedent of the petitioner.

On such consideration, we allow this application for bail subject to the following conditions:

- i) 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;
- ii) The petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever;
- iii) The petitioner shall not leave the station without the permission of the learned Special Judge, NDPS Court;
- iv) The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;
- v) The petitioner shall attend the trial on every hearing, unless exempted in accordance with law;
- vi) The petitioner shall inform the Special Judge as well as the Officer-in-Charge of the Police Station about his place of residence during bail and trial. Any change in the same shall also be communicated within 48 hours thereafter. Petitioner shall furnish details of his Aadhaar Card, Telephone Number, E-mail, PAN Card, bank Account Number, if any. The petitioner shall surrender his passport to the learned Trial

Court. In the event he does not hold any passport, he shall file an affidavit to that effect before the learned Trial Court;

- vii) The petitioner shall not indulge in any criminal activities. It is made clear that in case the petitioner is arraigned as an accused in future in any FIR, then this bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard. This shall also be considered as a negative factor for consideration of his future bail application, if any.

We, however, make it clear that the observations made are only prima facie. It is also revealed from the record that out of 14 witnesses, one witness was examined in part.

The application for bail of the petitioner is allowed. CRM (NDPS) 267 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)