

07.06.2023

Ct.No. 1
Item No. 19
Sb / Saswata
Allowed

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

C.R.M. (NDPS) 327 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 24.04.2023 in connection with Pradhan Nagar PS case no. 503 of 2018 dated 17.09.2018 under Section 20 (ii)(c) of the NDPS Act, 1985.

And

In the matter of : **Shyamal @ Shymal Dey**

...petitioner

Mr. Partha Pratim Sarkar
Mr. Sandip Guha Roy

...For the petitioner

Mr. Niloy Chakraborty
Mr. Subhasish Misra

....For the State

Learned counsel for the petitioner submits that the petitioner is in custody since 18th September 2018 and there has been slow progress in the trial and only 1 out of 14 witnesses has been examined in full and the second witness has been examined in part and there is no possibility of the trial being concluded within a reasonable time.

Learned counsel for the State, however, has opposed the prayer for bail.

It is submitted that narcotic substance above commercial quantity has been recovered from the joint

possession of the accused persons and in the event, the accused persons are released on bail, there is every possibility that they may abscond. However, it is fairly submitted that the petitioner has no criminal antecedents.

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.

In view of the fact that there has been slow progress in the trial and there is hardly any possibility of the trial being concluded in the near future and considering the fact that the petitioner is entitled to fair and speedy trial, and Moreover, since the prosecution has failed to show any criminal antecedent of the petitioner, we are inclined to grant bail to the petitioner.

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

i) The petitioner viz., **Shyamal @ Shymal Dey** 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 Judge, Special Court under NDPS Act, 2nd Court at Siliguri;

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 Judge, Special Court under NDPS Act, 2nd Court at Siliguri;

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.

The application for bail of the petitioner is allowed.

CRM (NDPS) 327 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.)