

06.06.2023
SL No.23
Court No.1
(gc)
(Allowed)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (NDPS) 335 of 2023

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Kharibari Police Station Case No.333 of 2022 dated 13.10.2022 under Sections 21(c)/ 22(c) of the NDPS Act.

And

In the matter of : **Dhiren Upreti**

- Petitioner.

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... For the Petitioner.

Mr. Abhijit Sarkar,
Mr. Ujjwal Luksom,
Mr. Biswarup Roy

... For the State.

The learned Counsel for the petitioner submits that the petitioner is in custody for seven months and the charge-sheet was filed on 181st day, that is, beyond the statutory period. The petitioner submits that no application for extension was filed by the prosecution. It is submitted that the petitioner filed an application for bail on 12th April, 2023 before the learned Trial Court on the 181st day of remand of the accused and the charge-sheet was filed on that date at 4.45 p.m. It is submitted that the learned Trial Judge refusing to grant bail has overlooked that the date of remand was to be excluded for considering the claim for default bail under Section 167(2) of the Cr.P.C.

The learned Counsel for the petitioner has drawn our attention to the application for default bail.

The learned Counsel for the prosecution submits that the charge-sheet was filed on 12th April, 2023, however, the petitioner has criminal antecedents. The chemical examination report dated 24th January, 2023 was also produced along with C.D.

It is extremely shocking that although the chemical examination report was submitted on 24th January, 2023, the charge-sheet was filed on 12th April, 2023 on the 181st day and we agree with the submission of the learned Counsel for the petitioner that in view of the judgment in ***Enforcement Directorate, Government of India Vs. Kapil Wadhawan & Anr. (Criminal Appeal Nos.701-702 of 2020) decided on 27th March, 2023***, the date of remand was to be included for considering the claim for default bail under Section 167(2) of the Cr.P.C in which case there is a lapse on the part of the prosecution. The prosecution although was in possession of the chemical examination report but for some inexplicable reason took almost three months to file the charge-sheet thereby creating a ground for the accused person to file an application for bail. However, since the fact remains that an invaluable right has accrued in favour of the petitioner by virtue of the decision in ***Enforcement Directorate*** (supra), we allow the 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 subject to the satisfaction of learned Additional District & Sessions Judge, 2nd Court (Special Court under NDPS Act), 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 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, NDPS Court as well as the Officer-in-Charge of the Police Station concerned 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 and it is needless to mention that this order shall not influence the trial in any manner whatsoever.

S.P., Darjeeling is directed to enquire into the matter and initiate the proceeding against the person or officer responsible for the delay in filing the charge-sheet and appropriate steps should be taken against the said person.

The application for bail of the petitioner is allowed.

The report of the S.P., Darjeeling in this regard shall be filed with the learned Registrar, Circuit Bench at Jalpaiguri by 13th June, 2023 and the learned Registrar shall place the report before this Bench.

Accordingly, the application for bail being CRM (NDPS) 335 of 2023 is 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.)