

09.03.2023

Sl. No.4

akd

[Rejected]

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

C. R. M. 748 of 2021

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 21.06.2021 in connection with Kotwali Police Station Case No.452 of 2019 dated 30.07.2019 under Sections 20(b)/25 of the NDPS Act. (NDPS Case No.23 of 2019)

And

In Re: ***Ranjan Roy & Anr.***

... .. Petitioners

Ms. Ashima Mandla
Mr. Deborshi Dhar

... .. for the petitioners

Mr. Aditi Shankar Chakraborty .. Id. Addl. Public Prosecutor
Mr. Sourav Ganguly

... .. for the State

Pursuant to our earlier direction, Officer-in-charge, Kotwali Police Station is personally present before this court. His presence is noted and dispensed with.

It is submitted on behalf of the petitioners that they are in custody for about three years and seven months. It is further submitted extension applications were filed solely on the ground of non-availability of chemical examiner's report. It is also submitted that the sealing of the contraband was not made at the place of occurrence.

Learned Advocate for the State opposes the prayer for bail.

We have considered the materials on record. Apart from non-availability of the chemical examiner's report, a co-accused was absconding. Hence, extension of the period of detention was necessary also for the purpose of apprehension of the said co-accused.

In the aforesaid circumstances, we are of the opinion that the extension made on the report of the Public Prosecutor was justified for

progress of investigation and the petitioners' detention was validly extended. Plea that the contraband was not sealed at the place of occurrence is a question of fact which requires to be assessed in the light of the evidence led by the prosecution vis-à-vis chain of custody of the sample drawn and examined by the FSL expert. It would be premature to adjudicate the plea at this stage. Chemical examiner's report has already been filed. Delay in the matter as noted earlier is due to abscondence of a co-accused and cannot be attributed to the prosecution.

Under such circumstances and in view of the statutory restrictions under Section 37 of the NDPS Act, we are not inclined to grant bail to the petitioners.

The application for bail is thus **rejected**.

Trial court is directed to exhaust all processes to ensure the attendance of the absconding accused and if his attendance cannot be procured inspite thereof, he shall be declared as proclaimed offender and the trial shall proceed against the petitioners and be concluded at the earliest.

(Subhendu Samanta, J.)

(Joymalya Bagchi, J.)