

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

16.08.2023
Court No.1
Item. 25
(sg/cm)

CRM(NDPS) 555 OF 2023

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with NCB Crime No. 37/NCB/KOL/2018 under Sections 21(b)(ii)(C)/24/29 of the NDPS Act.
And

In the matter of: LUKA SHERPA

.Petitioner.

Mr. Hillol Saha Poddar
Ms. Mousumi Das

For the Petitioner.

Mr. Ajoy Kr. Singhanian
Mr. Sudip Kr. Paul
Mr. Sourab Kar

For the NCB

1. The petitioner has been in custody for five years. Admittedly, charges were framed on 2nd April, 2019 and of the seven witnesses, only three have been examined till date. The last witness of the petitioner was examined on 15th February, 2023.
2. Although learned counsel appearing for the prosecution puts the blame on the nature of functioning of the learned Court including ceasework and lack of staff, we are of the view that the long delay in conducting the trial of the case is a factor which goes against the prosecution.
3. The decision of the Co-ordinate Bench in CRM (NDPS) 525/2023 was primarily on three considerations. First, the Co-ordinate Bench relied on the order of rejection of an earlier Co-ordinate Bench on 3rd July, 2023 and the fact that the period given for completion of trial had still

not expired. More significantly, the Co-ordinate Bench expressed its lack of confidence on the petitioner's conduct post-release. The order of the Co-ordinate Bench, however, reflects the view that undertrials cannot be forced to remain in custody in light of Article 21 of the Constitution, if there is no possibility of completion of trial in the near future.

4. We are informed that the next date for evidence has been fixed on 7th December, 2023.
5. The delay in the conduct of the trial is sufficient to rebut the statutory restriction under Section 37 of the NDPS Act, 1985.
6. We are accordingly of the view that the facts in the present case fits into the parameters of cases decided both by the Supreme Court as well as the High Courts on the irrevocable violation of the rights of undertrials under Article 21 of the Constitution of India where there has been an inordinate and unexplained delay in the conduct of trial. The very fact that the last date of evidence was 15th February, 2023 and the next date is on 7th December, 2023 stands testimony to our view.
7. The petitioner's prayer for bail is accordingly allowed.
8. The petitioner shall accordingly be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand only) with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Judge, Special Court, Siliguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall also make himself available for the trial as and when the petitioner is required and shall also not leave the jurisdiction of the concerned police station without leave of the concerned authorities.

9. CRM(NDPS) 555 of 2023 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS,J.)

(MOUSHUMI BHATTACHARYA,J.)