

AD-43
Ct No.01
Jalpaiguri
12.09.2023
B.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 617 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 16.08.2023 in connection with Pradhannagar Police Station Case No. 646 of 2020 dated 30.09.2020 under Sections 17(C) of the NDPS Act, 1985.

And

In the matter of: **MARJINA BEGUM @ MORJINA**

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... for the petitioners

Mr. Nilay Chakraborty,
Mr. Aniruddha Biswas

... for the State

1. Learned counsel for the State strongly opposes the prayer for bail.
2. Learned counsel for the petitioner cites the judgment of *Rabi Prakash Vs. State of Odisha* reported at 2023 Live Law (SC) 533 for the proposition that in case of prolonged incarceration the conditional liberty will override the statutory embargo created under Section 37 of the NDPS Act. Learned counsel also cites a judgment of a coordinate Bench of this Court dated August 2, 2023 passed in CRM(NDPS) 1346 of 2023 on the same proposition.

3. It is argued that the petitioner's application for bail was last rejected on February 27, 2023. Thereafter, about five dates have elapsed without the trial proceeding substantially.
4. We find from the cited judgments that the proposition is well-settled that prolonged incarceration dilutes the presumption under Section 37 of the NDPS Act. Although the said proposition was also available to the petitioner at the time of the last rejection of bail on February 27, 2023, subsequently the trial was scheduled on five dates but has not yet progressed substantially, which furnishes a further mitigating factor to the petitioner, for this Court to lean in favour of the petitioner on the principle laid down in *Rabi Prakash (supra)*.
5. In such view of the matter, CRM (NDPS) 617 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Judge under NDPS Act, Siliguri.
6. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
7. Further, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police

officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)