

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

**30.08.2023
Court No.01
Item NO. 28
P.P./S.D.**

CRM (NDPS) 634 of 2023

In Re:- An application for bail under section 439 of the
Code of Criminal Procedure;

And

In Re: John Rava @ Joban Rabha

...Petitioner

Mr. Kumar Shantanu

....For the petitioner

Mr. Kallol Acharjee

Mr. Kallol Nag

...For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Alipurduar Police Station Case No.252 of 2017 dated 14.5.2017 under Sections 20(b)(ii)(C) of the NDPS Act, 1985.

Mr. Shantanu, learned advocate appearing on behalf of the petitioner submits that the case proceedings were initiated way back in the year 2017. There are total 11 witnesses and only two witnesses have been examined till date. The petitioner is languishing in custody since 14.5.2017 and there is no possibility towards conclusion of the trial in the near future. He further submits that the petitioner's prayer was last rejected by an order of a Coordinate Bench of this Court on 13.6.2023. At the time of hearing, the issue of long detention was raised on behalf of the petitioner. However, as it was submitted on behalf of the State that only one witness remains to be examined, the

Hon'ble Court refused the petitioner's prayer for bail and directed expeditious disposal stating *inter alia* that in the event the evidence is not concluded within one month and the reason for such delay is not attributable to the petitioner, it would be open to the petitioner to renew his prayer for bail.

He argues that the deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed under Article 21 of the Constitution and in the said conspectus, further detention of the petitioner is not warranted.

Per contra, Mr. Nag, learned advocate appearing for the State submits that the delay towards conclusion of trial is not totally attributable to the State. Furthermore, such delay stands intervened by a period lost due to the pandemic.

Answering our query, he submits that there are 11 witnesses and till date two witnesses have been examined and next date has been fixed on 24.11.2023 for examination of the CSW nos.3 and 4.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary. From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay which has occasioned. He is languishing in custody since 14.5.2017. There is also no possibility towards early conclusion of the trial in the near future.

In several cases, the Hon'ble Supreme Court has granted bail owing to the long period of incarceration and the

unlikelihood of the trial being completed any time in the near future. The exposition of Article 21 in the case of *Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna*, reported in (1980) 1 SCC 81 was exhaustively considered afresh in the case of *Abdul Rehman Antulay and Ors. Vs. R.S.Nayak and Anr.*, reported in (1992) 1 SCC 225. In the said judgments, it has *inter alia* been observed that a fair, just and reasonable procedure explicit in Article 21 creates right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice.

Applying such proposition of law to the facts of the case, we are of the opinion that further detention of the petitioner, who is in custody since 14.5.2017 is not warranted.

Accordingly, we allow this application and direct that the petitioner, namely, **John Rava @ Joban Rabha**, 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 to the Judge, Special Court (under NDPS Act), Jalpaiguri.

It is further directed that the petitioner shall reside within the jurisdiction of Alipurduar Police Station and shall not leave the said jurisdiction and shall meet with the Officer-in-Charge, Alipurduar Police Station once a week until further orders.

He shall not tamper with the evidence or influence the witnesses and shall attend the learned Court below on all the dates as fixed for hearing.

It is made clear that in the event the conditions as stated above are not complied with, without any justifiable cause, the learned Court below would be at liberty to cancel the petitioner's bail without any further reference to this Court.

With the above observations and directions, the application for bail, being C.R.M.(NDPS) 634 of 2023 is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Lapita Banerji, J.)

(Tapabrata Chakraborty, J.)