

AD-58
Ct No.01
Jalpaiguri
12.09.2023
B.Pal

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

CRM (NDPS) 649 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 18.08.2023 in connection with C.R. (NDPS) Case No. 28 of 2018 arising out of NCB Crime No.37 of 2018 dated 03.08.2018 under Sections 20(b)(ii)(c), 24 and 29 of the NDPS Act, 1985.

And

In the matter of: **GANESH TAMANG**

Ms. Rima Sarkar,
Mr. S. Sethia,

... for the petitioner

Mr. Sudip Kumar Paul,
Mr. Sourab Kar,

... for the NCB

1. Learned counsel for the petitioner contends that the petitioner is a resident of Nepal. It is further argued that applying the same principle on which a co-accused person was released on bail, the present petitioner ought also to be released on bail. That apart, the charge-sheet has already been filed and the trial is going on.
2. Learned counsel for the NCB places reliance on a judgment of a coordinate Bench to argue that bail was not granted in such case, where the petitioner was also a resident of Nepal. The trial, however, was expedited in the said case. It is

submitted that a similar order may be passed in the present case as well.

3. We find from the coordinate Bench judgment, where a co-accused person was released on bail, that the Court invoked the provision of Article 21 of the Constitution of India, observing that the coordinate Bench in CRM (NDPS) 525/2023 had taken into consideration that undertrials cannot be forced to remain in custody in the light of Article 21 of the Constitution if there is no possibility of completion of trial in the near future.
4. Keeping on balance the apprehension of the NCB that the petitioner may flee justice in the event the bail is granted and the fact that the petitioner is entitled to personal liberty, subject to the rigours of law, as well the fact that the petitioner is already in custody for more than five years, we are inclined to lean in favour of granting bail to the petitioner. In any event, the judgment cited by the NCB does not hold any contrary proposition to that argued by the petitioner, inasmuch as the coordinate Bench only observed that the trial has already commenced and the petitioner was a foreign national and as such the trial court was to conclude the trial within six months from the said date.
5. However, in the present case, the petitioner is already in incarceration for more than five years, which was not a consideration in the coordinate Bench judgment cited by the NCB. Although the NCB might have a point in that the

petitioner and the co-accused who has been released on bail are on different footings insofar as the allegations are concerned, in view of the long period of incarceration already suffered by the petitioner, we are granting bail to the petitioner.

6. Accordingly, CRM (NDPS) 649 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 Judge, Special Court under NDPS Act, Siliguri.
7. 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.
8. 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.)