

AD-55
Ct No.01
Jalpaiguri
22.09.2023
SP

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

CRM (NDPS) 665 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 22.08.2023 in connection with CR (NDPS) Case No. 71 of 2020, corresponding to Matigara Police Station Case No. 1086 of 2020 dated 22.10.2020 under Sections 17(C)/20(C) of the NDPS Act, 1985.

And

In the matter of: SUBODH ROY@SUBODH KUMAR ROY AND ANR

Ms. Kakali Bose
Mr. Akhil Biswas
Mr. Sudip Banerjee

... for the petitioner

Mr. Aditi Shankar Chakraborty
Mr. Subhasish Misra

... for the State

1. Learned counsel for the petitioner argues that a co-accused person was released on bail vide order dated September 13, 2023.
2. It is submitted that the petitioner is already behind the bar for a period of 1066 days.
3. It is further argued that the provisions of Section 52A of the NDPS Act were violated, inasmuch as the samples of seized articles were sent for chemical examination prior to certificate of inventory being issued.

4. It is also contended that the provisions of Section 41B of the Criminal Procedure Code were violated.
5. Learned counsel for the State vehemently opposes the prayer for bail and places reliance on the previous rejection of bail of the petitioner on February 27, 2023. It is pointed out that while so rejecting, the coordinate Bench had observed that the trial be expedited and concluded within a year from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.
6. It is argued that in view of the said time-line have not yet been exhausted, the present application for bail is premature.
7. We find from the rejection order dated February 27, 2023 that before the said Court, the points agitated now were not taken.
8. The allegations now made by the petitioner prima facie hit the presumption under Section 37 of the NDPS Act at its root, since the entire process of search and seizure is prima facie vitiated by the above non-compliance of statutory provisions. That apart, it is rightly pointed out by the petitioner that similar observations were passed regarding disposal of the Trial also on January 4, 2022 when a direction was passed in connection with the bail application of a co-accused person, that the Trial be completed preferably within 18 months from the said date, that is, from January 4, 2022, which was never complied with.

9. In such view of the matter, we find that nothing in the rejection dated February 27, 2023 deals with the present allegations of the petitioner and as such, there is no bar to grant bail to the petitioner, particularly since, by a subsequent order dated September 13, 2023, a co-accused person has also been granted similar relief.
10. Hence, CRM (NDPS) 665 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, at Siliguri.
11. 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.
12. 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.)