

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

06.09.2023
Court No.01
Item No.11
Avijit Mitra

CRM (NDPS) 685 of 2023

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

And

In re: Anand Tamang

... petitioner.

Ms. Dipika Pal

...for the petitioner.

Mr. Abhijit Sarkar,
Mr. Sourav Ganguly

... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Khoribari Police Station Case No.188 of 2017 dated 18.08.2017 under Sections 21(c) and 22(c) of the NDPS Act.

Ms. Pal, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. He is languishing in custody for more than six years. Out of 13 witnesses only seven had been examined and as such, there is no possibility towards conclusion of the trial in the near future.

She further submits that as the Investigating Officer was not appearing for examination, a bailable warrant of arrest was issued, as would be explicit from the order passed by the learned Court below on 24th February, 2023. The said officer has still not appeared for examination and the next date is

fixed on 18th September, 2023. From the said sequence of facts it is explicit that the delay which has occurred is totally attributable to the State.

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

Mr. Ganguly, learned advocate appearing for the State submits that contraband substance above commercial quantity has been recovered from the possession of the petitioner and as such the statutory restrictions are clearly attracted. There are strong incriminating materials on record on the basis of which no finding can be arrived at, at this stage that there are reasonable grounds for believing that the petitioner is not guilty of the offence and that he is not likely to commit any offence while on bail.

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 occurred. He is languishing in custody for more than six years and in view of the conduct of the prosecution it appears that there is no possibility towards 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 and it was *inter alia* observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice. Reliance has also been placed upon the judgment delivered by the Hon'ble Supreme Court in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation & anr.* reported in (2022) 10 SCC 51.

Applying such proposition of law to the facts of the present case, we are of the opinion that further detention of the petitioner, who is in custody for more than six years, is not warranted.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.20,000/- (Rupees Twenty thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the concerned learned Judge, Special Court (NDPS Act), 2nd Court, Siliguri with a further condition that the petitioner shall reside within the jurisdiction of Khoribari Police Station until further orders

save and except for attending the learned Court below on all the dates, as specified for hearing.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

The application for bail being CRM (NDPS) No. 685 of 2023 is, accordingly, disposed of.

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

(Lapita Banerjee, J.)

(Tapabrata Chakraborty, J.)