

D/L. 47.
September 22, 2023.
MNS

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

CRM (NDPS) 709 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on 06.09.2023 in connection with NJP Police Station Case No. 787 of 2020 dated 11.07.2020 under Sections 20(b)(ii)(C)/23(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Bhajan Das @ Bhaja

.... Petitioner

Mr. Jagriti Mishra,
Mr. Naser Ali

... for the petitioner

Mr. Aditi Shankar Chakraborty,
Mr. Kallol Nag

... for the State.

1. Learned counsel for the petitioner argues that the petitioner is in custody for three years two months and ten days. Moreover, the charges have been framed some time back, but as yet not a single witness has been examined in the trial. As such, due to long incarceration, the petitioner should be granted bail.
2. Learned counsel appearing for the State opposes the prayer for bail and submits that, in the order of the co-ordinate Bench dated August 22, 2023, refusing bail to a co-accused person on similar footing as the petitioner, it was observed that in a still-previous order of rejection of prayer for bail of a co-accused, a direction was given that the trial would be concluded preferably within a year from the date of communication of the order, which would be around July

5, 2024. Proceeding on such premise, the learned Co-ordinate Bench observed that since the point taken by the petitioner before it had not been taken previously, there was no reason to come to a different conclusion.

3. It is submitted that the same logic applies to the petitioner since the co-ordinate Bench, while dismissing the bail prayer of the co-accused on similar footing, observed that the court ought to wait till July 5, 2024.
4. Upon a careful scrutiny of the co-ordinate Bench dated August 22, 2023, we find that it was not considered by the said Bench that not a single witness had been (even till date) examined.
5. Although the said order was passed on August 22, 2023, the nature of allegation of the petitioner is a continuing cause of action, arising day to day. A person in incarceration counts each and every date of incarceration as a fresh cause of action for the purpose of seeking bail.
6. Moreover, we find that after August 22, 2023, for more than one month, the trial has not progressed and the next date is fixed on September 25, 2023.
7. In any event, the arguments of the petitioner as to long incarceration and the fact that not a single witness has yet been examined were not considered specifically while refusing bail to the co-accused person.
8. Hence, keeping in view the long period of incarceration already suffered by the petitioner and the remoteness of the conclusion of

trial, we find that the restriction under Section 37 of the NDPS Act is alleviated.

9. Accordingly, CRM (NDPS) 709 of 2023 is allowed, thereby granting bail to the petitioner on condition that the petitioner furnishes 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, Jalpaiguri.
10. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend the trial on each and every date.
11. 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.)