

30.01.2023
03.
mb

***Calcutta High Court
In the Circuit Bench at Jalpaiguri***

CRM(NDPS) 441 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 20.12.2022 in connection with Bhaktinagar Police Station Case No. 244 of 2019 dated 27.03.2019 under Sections 20(b)(ii)(c) of the NDPS Act.

In the matter of : Rahaman Ali @ Abdul Rahaman
... Petitioner.

Mr. Jaydeep Kanta Bhowmik,
Mr. Sayantan Bhowmik
...for the Petitioner.

Mr. Aditi Shankar Chakraborty,
Mr. Aniruddha Biswas
.....for the State.

The limited grievance of the present petitioner is that although there was a previous liberty granted by a coordinate Bench of this Court in its order dated March 11, 2022 that the petitioner would be permitted to make a fresh application on the basis of the new document found during the interregnum, upon such application being filed before the trial court requesting an ossification test to ascertain the age of the petitioner, the same is still pending, which goes to the detriment of the petitioner, who is already in custody for more than 1400 days.

Learned counsel appearing for the State points at the findings in the trial court's order dated December 15, 2022 to the effect that on several occasions, the matter was adjourned due to absence of representation on the part of the petitioner himself.

Be that as it may, it transpires from the facts of the case that the reliefs sought by the petitioner hinge upon ascertainment of the age of the petitioner inasmuch as the defence of juvenility was taken by the petitioner.

Since the previous document produced by the petitioner by way of a school certificate could not be verified due to the original document having gone missing, the only other option left before the petitioner to prove his age is an ossification test, which has precisely being sought in the trial court as per liberty granted by the coordinate Bench.

In view of the said prayer being innocuous and since the resistance on the part of the State might create an adverse inference against the State, the justified course of action is to direct that the ossification test, as sought for by the petitioner, be held as expeditiously as possible.

Accordingly, CRM (NDPS) 441 of 2022 is disposed of by directing the Judge, Special Court (under NDPS Act), First Court at Jalpaiguri to direct an ossification test to be held to ascertain the petitioner's age at the earliest.

Such necessary order shall be passed by the trial Judge within a fortnight from date.

It is expected that the ossification test shall be conducted within a month thereafter.

It is made clear that the merits of the case have not entered into by this Court.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)