

CRM-M-38982-2022
Date of decision: 26.07.2023

...PETITIONER

...RESPONDENT

4. Learned counsel for the petitioner contends that the petitioner is in custody for a period of 04 years and 04 months. Though, he is a convict in a case under Section 279 IPC wherein only fine was imposed upon him but he is not involved in any other case under NDPS Act.

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5. Learned counsel for the petitioner has sought to rely upon the decision of Supreme Court rendered in ***Criminal Appeal No. 668 of 2020*** titled as ***Amit Singh Moni Vs. State of Himachal Pradesh***, wherein bail has been granted to the accused in a case pertaining to the recovery of commercial quantity, after he had completed more than 02 years and 07 months of actual custody. Furthermore, it has been argued that in SLP CrI. No. 5769 of 2022 titled as Nitish Adhikary @ Bapan Versus The State of West Bengal, decided on 01.08.2022 by the Hon'ble Supreme Court of India, the accused was granted bail in a case pertaining to recovery of commercial quantity after he had undergone custody for 01 year and 07 months and trial was at a preliminary stage, as only 1 witness has been examined and the accused was not having criminal antecedents. Besides, the decision rendered in SLP CrI. No. 4173 of 2022 decide on 04.08.2022 titled as Shareef Shariful Islam @ Sarif Versus The State of West Bengal, the accused was granted bail after he had suffered incarceration for a period of 01 year and 06 months and there being no likelihood of completion of trial in future. Furthermore, the decision in SLP Criminal No.6690-2022, it has been held that in the absence of criminal antecedents and long incarceration, the condition under Section 37 of NDPS Act can be dispensed with and moreso, when the trial is not progressing.

6. On instructions from HC Harjinder Singh, learned State counsel submits that initially, the charge was framed against the petitioner on 22.12.2021 but subsequently, the delay in recording of evidence has occurred as the co-accused were not being produced in the Court while they were in custody. Furthermore, Arshdeep Singh, co-accused was granted interim bail but he absented from the proceedings and he was declared as proclaimed person. Subsequently, supplementary challan was also presented against two other co-accused and it has resulted in delay in recording the evidence. Out of 21, 06 witnesses have been

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examined till date and the earlier petition for bail of the petitioner was dismissed by a speaking order on 21.11.2021.

7. Be that as it may, the petitioner is in custody for a period of 04 years and 04 months and is not involved in any other case under NDPS Act. Out of 21, only 06 witnesses have been examined till date. 16 more witnesses still remain to be examined. Although, the earlier petition for bail of the petitioner was dismissed by a speaking order on 21.11.2021 but a period of more than one and a half years has lapsed since then. The conclusion of trial is likely to take sometime. The speedy trial is a constitutional right provided to an accused under Article 21 of the Constitution of India. As such, sufficient mitigating circumstances are made out and ends of justice will meet, if the petitioner is extended the concession of bail.

8. Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

9. The petition is allowed accordingly.

26.07.2023

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(VIVEK PURI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No