

15.01.2024
Sl. No.13
akd
[ALLOWED]

C. R. M. (NDPS) 74 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.01.2024 in connection with English Bazar Police Station Case No.1084 of 2021 dated 30.08.2021 under Sections 21(c)/29 of the NDPS Act.

And

In Re: ***Md. Tafiqul***

... .. Petitioner

Mr. Mazhar Hossain Chowdhury

... .. for the petitioner

Mr. Anand Kesari

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for more than three years. It is further submitted there is inordinate delay in trial. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits delay was due to abscondence of co-accused.
3. We have considered the materials on record. Though narcotics i.e. 305 gms. of *Heroin*, which is above commercial quantity was recovered from the joint possession of the petitioner and co-accused, we find petitioner has suffered incarceration for more than three years. Though some delay in the matter is attributable due to abscondence of co-accused, we note from the records charge was framed on 09.02.2023. Only two witnesses have been examined till date. Prosecution proposes to examine nine witnesses in all. There is no possibility of trial concluding in the near future. Under such circumstances, we are of the opinion petitioner has been able to make out a case of breach of his fundamental right to speedy trial and he is entitled to bail on this score. Bail prayer on the ground of

inordinate delay in trial is not fettered by restrictions under Section 37 of the NDPS Act. Reference in this regard may be made to ***Rabi Prakash vs. The State of Odisha***¹.

4. Therefore, the accused/petitioner, namely ***Md. Tafiqul***, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the NDPS Act-cum-Additional Sessions Judge, 3rd Court, Malda subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future.
5. In the event he fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.
6. The application for bail, thus, stands allowed.

(Partha Sarathi Sen, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109