

15.01.2024
Sl. No.15
akd
[ALLOWED]

C. R. M. (NDPS) 76 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 05.01.2024 in connection with English Bazar Police Station Case No.1057 of 2021 dated 26.08.2021 under Sections 21(c)/29 of the NDPS Act.

And

In Re: ***Kalam Sk. @ Kalam Sekh & Anr.***

... .. Petitioners

Ms. Minoti Gomes
Mr. Mounick Ghosh

... .. for the petitioners

Mr. Sandip Chakraborty

... .. for the State

1. It is submitted on behalf of the petitioners that they are in custody for about two years and four months. It is further submitted there is slow progress in trial. Accordingly, they pray for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits four witnesses have already been examined.
3. We have considered the materials on record. Allegations involve recovery of narcotics i.e. 260 gms. of *brown sugar*, which is above commercial quantity from the possession of the petitioners. They are in custody for about two years and four months. Only four witnesses have been examined till date. Delay in the matter cannot be attributed to the petitioners. Prosecution proposes to examine eleven witnesses in all. There is little possibility of trial concluding in the near future. Under such circumstances, we are of the opinion petitioners have been able to make out a case of breach of their fundamental right to speedy trial and they are 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 petitioners, namely ***(1) Kalam Sk. @ Kalam Sekh & (2) Hasan Sk. @ Hasan Sekh***, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only) each, 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, 3rd Court, Malda subject to condition that the said petitioners 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 they fail to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel their 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