

31.01.2024.
07.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 86 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Nischinda P. S. Case No.138 of 2021 dated 05.08.2021 under Sections 20(b)(ii)(c)/25/29 of the NDPS Act.

In the matter of : **Zakir Hossain Mondal.**

.... Petitioner.

Sk. Toslim Ali.

...for the Petitioner.

Mr. Debasish Roy, Id. A.P.P.,
Ms. Sreyashee Biswas.

...for the State.

1. Petitioner is in custody for two years and five months. He submits there is delay in trial. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the bail prayer. She submits eight out of fifteen witnesses have been examined.
3. We have considered the materials on record. Though allegations involve recovery of 256 kgs. of ganja from two vehicles and the prayer for bail on merits would attract restrictions under Section 37 of the NDPS Act, petitioner prays for bail on the ground of delay in trial. He is in incarceration for more than two years and five months and only eight witnesses have been examined till date. Prosecution proposes to examine seven more witnesses. Delay in the matter cannot be attributed to the defence.
4. Under such circumstances, we are of the opinion petitioner has been able to make out a case for bail on the ground of delay in trial. Bail prayer on the ground of delay in

trial is not fettered by restrictions under Section 37 of the NDPS Act as held in ***Rabi Prakash Vs. State of Odisha***¹.

5. Hence, we are inclined to grant bail to the petitioner.

6. Accordingly, the petitioner viz., **Zakir Hossain Mondal** shall be released on bail upon furnishing a 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 the N.D.P.S. Act, Howrah subject to condition that he 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.

7. In the event petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

8. This application for bail is, thus, disposed of.

(Gaurang Kanth,J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC Online SC 1109