

17.01.2024
Sl. No.19
akd
[Rejected]

C. R. M. (NDPS) 106 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 09.01.2024 in connection with NDPS Seizure Case No. S/C No.12/NDPS/CL/Phensedyl/BCPU/CCP/WB/2021-22 dated 27.11.2021 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.262 of 2021)

And

In Re: ***Md. Ashraf Ali @ Md. Ashraf Ali***

... .. Petitioner

Mr. Tapodip Gupta

... .. for the petitioner

Ms. Rajyashree Venkat Kundalia

Mr. Abhradip Maity

... .. for the UOI

1. It is submitted on behalf of the petitioner that he is in custody for about two years and one month. It is further submitted there is inordinate delay in trial. Accordingly, he prays for bail.
2. Learned Advocate for the Custom authorities opposes the prayer for bail and submits co-accused who is on bail failed to appear. As a result, charge could not be framed.
3. We have considered the materials on record. Statements of witnesses including contemporaneous document i.e. seizure memo disclose recovery of narcotic substance i.e. 3100 bottles of *phensedyl cough syrup* containing *codeine phosphate*, which is above commercial quantity from the petitioner and others. No recovery was made from co-accused who is on bail. Hence, petitioner cannot claim parity with the said co-accused who is on bail.
4. On the score of delay in trial we note the case has been adjourned due to non-appearance of co-accused. Prosecution cannot be made

responsible for the same. Under such circumstances, we are of the opinion petitioner has not been able to make out a case for bail either on merits or on the score of delay in trial.

5. The application for bail is thus rejected.
6. Trial court is directed to proceed with the consideration of framing of charge at the earliest and in the event the accused persons who are on bail do not cooperate, it shall be open to the trial court to cancel their bail and proceed in accordance with law.
7. Parties shall communicate a copy of this order to the trial court for due compliance.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)