

19.01.2024
Sl. No.9
akd
[ALLOWED]

C. R. M. (NDPS) 122 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 08.01.2024 in connection with Hasnabad Police Station Case No.554 of 2021 dated 09.05.2021 under Sections 21(c)/29 of the NDPS Act.

And

In Re: ***Arijul Sardar @ Gajju & Anr.***

... .. Petitioners

Mr. Mazahar Hossain Chowdhury

... .. for the petitioners

Ms. Amita Gaur

... .. 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 inordinate delay in trial. Accordingly, they pray for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits bail prayer of the petitioners was rejected earlier on merits.
3. We have considered the materials on record. Though narcotics above commercial quantity was recovered from the petitioners, they have suffered incarceration for about two years and four months. Only three witnesses have been examined till date. Prosecution proposes to examine nine witnesses in all. Delay in the matter cannot be attributed to the petitioners. 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) Arijul Sardar @ Gajju & (2) Raju Sana @ Gute**, 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-cum-Additional Sessions Judge, 6th Court, Barasat, North 24-Parganas 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.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109