

25.01.2024

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Allowed

C.R.M. (NDPS) No. 161 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with STF Police Station Case No. 14 of 2021 dated 29.07.2021 under Sections 20(b)(ii)(c)/29 of the N.D.P.S. Act.

And

In Re : Sk. Sazeed petitioner

Mr. D. M. Chowdhury

Mr. S. Mukherjee

Mr. Ramashis Mukherjee

.....for the petitioner

Mr. Ranadeb Sengupta

.....for the State

1. Learned Counsel for the petitioner submits he is in custody for two years and six months. It is also submitted there is inordinate delay in trial. Accordingly, he prays for bail on such score.

2. Learned Counsel for the State opposes the prayer for bail and submits delay was caused initially due to resolution taken by the local Bar not to participate in proceedings.

3. We have considered the materials on record. Allegations involve recovery of 5.357 Kgs. of Charas from the petitioner. Prayer for bail on merits would attract restrictions under Section 37 of the NDPS Act but the petitioner has canvassed his plea for bail on the ground of inordinate delay in trial. We have also gone through the ordersheet placed on record. We note on 16.01.2023, 14.06.2023 and 20.11.2023 though witnesses were

present in court, they could not be examined due to resolutions taken by the local Bar not to participate in judicial proceedings. Prosecution may not be responsible for this delay but it is undeniable that the petitioner awaiting justice languished in jail. In a catena of cases¹ the Hon'ble Apex Court has held resolutions by the Bar not to attend judicial proceedings interfere with smooth administration of justice and amount to criminal contempt of court. Matter is further exacerbated in criminal prosecution where witnesses who come to court are not examined due to such illegal resolutions and the accused languishes in jail.

4. We take judicial notice of this fact which is a recurrent occurrence in all the Courts in the State of West Bengal.

5. In order to avoid such a situation we direct as follows:-

- (i) In a criminal trial if a witness is in attendance, trial court shall ensure that the said witnesses is examined;
- (ii) Resolution of a Bar Association not to attend proceedings shall not stand in the way of examination of such witness. In the event learned Counsels in the proceeding decline to participate and examine the witnesses on the excuse of a resolution of the Bar the trial court concerned shall refer the matter to the High Court for initiating criminal contempt against the learned Counsels concerned as well as the President and

¹ Harish Uppal (Ex-Capt.) vs Union of India, (2003) 2 SCC 45; Hussain vs. Union of India, (2017) 5 SCC 702; Krishnakanat Tamrakar vs. State of M.P., (2018) 17 SCC 27; District Bar Association, Dehradun vs. Ishwar Shandilya, (2020) 17 SCC 672

Secretary of the Bar Association which has taken such resolution interfering with the smooth administration of justice;

(iii) In the event trial Judge fails to make a reference as aforesaid, it shall be considered as dereliction of duty on his part.

6. Learned Registrar General is directed to communicate a copy of this order to all courts in the State of West Bengal and to the Union Territory of Andaman and Nicobar Islands. He shall also send a copy of this order to the Bar Council of West Bengal as well as the Bar Associations in the State of West Bengal and Union Territory of Andaman and Nicobar Islands.

7. A copy of this order be also communicated to the learned Legal Remembrancer who shall communicate this order to all Public Prosecutors so that the Prosecutors shall examine their witnesses in attendance even if there is a resolution by the Bar not to participate in court proceedings.

8. In the present factual matrix we note the delay is not attributable to the petitioner and was due to various systematic reasons including resolutions by the local Bar. There is little 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 inordinate delay in trial. Bail prayer of the petitioner on the ground of delay in trial is not fettered by restrictions under Section 37 of the NDPS Act. Accordingly, we are inclined to grant bail to the petitioner.

9. Accordingly, we direct that the petitioner 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, Bench-1, NDPS Act, City Sessions Court, Calcutta, subject to conditions 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.

10. 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.

11. The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)