

29.02.2024

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Allowed

C.R.M.(NDPS) No. 163 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Berhampore Police Station Case No. 838 of 2021 dated 08.08.2021 under Sections 22(c)/29 of the NDPS Act.

And

In Re : Ashraful Sk. petitioner

Mr. Arnab Chatterjee

Mr. Anisur Rahaman

... for the petitioner

Ms. Amita Gaur

... for the State

1. Learned Counsel for the petitioner submits he is in custody for two years and seven months. It is also submitted there is slow progress in trial. He prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits seven witnesses have been examined.

3. We have considered the materials on record. It is alleged 100 bottles of Phensedyl Syrup were recovered from the petitioner. He is in custody for more than two and half years. In spite of direction given by a learned Single Judge in CRR 2732 of 2023 to conclude trial at an early date prosecution was indolent in producing witnesses. Under such circumstances we are constrained to hold there is little possibility of trial concluding in the near future and 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.

4. 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, Special Court under NDPS Act-cum-learned Additional District & Sessions Judge, 5th Court, Berhampore, Murshidabad, subject to conditions 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.

5. In the event he 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.

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

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC Online SC 1109