

19.03.2024
Sl. No.3
akd
[ALLOWED]

C. R. M. (NDPS) 196 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 22.01.2024 in connection with Beldanga Police Station Case No.708 of 2021 dated 30.12.2021 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.08 of 2022)

And

In Re: ***Habibur Molla***

... .. Petitioner

Mr. Arnab Chatterjee
Ms. Dhanasree Biswas
Ms. Poulami Bose

... .. for the petitioner

Mr. Debasish Roy .. Id. Public Prosecutor
Mr. Rudradipta Nandy .. Id. Addl. Public Prosecutor
Mr. Santanu Talukdar

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for about two years and two months. It is further submitted there is inordinate delay in trial. Accordingly, he prays for bail.
2. Report is placed on record.
3. Learned Public Prosecutor opposes the prayer for bail.
4. We have considered the materials on record. Though narcotics i.e. 55 bottles of *phensedyl syrup* containing *codeine phosphate*, which is above commercial quantity was recovered from the petitioner, he is in custody for more than two years. No prosecution witness has been examined till date. In spite of liberty given by this court to bring witnesses in course of the last schedule i.e. from 11.03.2024 to 13.03.2024, prosecution has failed to do so. This exposes indifference of the prosecution to conduct trial expeditiously. Delay in the matter cannot be attributed to the petitioner. Under such circumstances, we are of the opinion petitioner has been able to

make out a case of breach of his fundamental right to speedy trial and is 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.

5. Therefore, the accused/petitioner, namely ***Habibur Molla***, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only), 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 District Judge, 5th Court, Berhampore, Murshidabad subject to condition that the said 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 or commit similar offences in future.
6. 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 automatically without reference to this court.
7. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109