

02.02.2024
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Allowed

C.R.M.(NDPS) No. 219 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Nischinda Police Station Case No. 213 of 2021 dated 10.11.2021 under Section 21(c) of the NDPS Act.

And

In Re : Haran Fakir petitioner

Mr. Tapodip Gupta
Sk. Toslim Ali
Mr. Suman Bhanja

... for the petitioner

Mr. Debasish Roy, learned PP
Ms. Sreyashee Biswas

... for the State

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

2. Learned Counsel for the State opposes the prayer for bail.

3. We have considered the materials on record. Two liters of codeine phosphate was recovered from the petitioner. He is in custody for more than two years. No witness has been examined. Perusal of the ordersheet shows witnesses did not turn up on the dates fixed for recording evidence. This shows indifference on the part of the prosecution to lead its evidence. Petitioner is not responsible for the delay. Under such circumstances, we are of the view 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 and Sessions Judge, 3rd Court, Howrah, subject to conditions that 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.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC Online SC 1109