

06.02.2024
Sl. No.9
akd
[ALLOWED]

C. R. M. (NDPS) 229 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 30.01.2024 in connection with Deganga Police Station Case No.356 of 2020 dated 30.07.2020 under Sections 21/21(c)/22(c)/23(c)/24/25/27/29/30 of the NDPS Act and Section 14 of the Foreigners Act.

And

In Re: **Swapan Sarkar**

... .. Petitioner

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

... .. for the petitioner

Mr. Neguive Ahmed .. Id. Addl. Public Prosecutor
Mr. Bitosok Banerjee

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for more than three years. It is further submitted there is inordinate delay in trial. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits narcotics i.e. 40 ltrs. of *codeine mixture*, 220 bottles of *phensedyl syrup* and controlled substance were recovered from the house of the petitioner. Petitioner and one foreign national were arrested from the residence.
3. We have considered the materials on record. A large volume of narcotics and controlled substance were recovered from the residence of the petitioner. His bail prayer on merits would be hindered under Section 37 of the NDPS Act. However, petitioner has sought for bail on the ground of delay in trial. We note he is languishing in jail for more than three years. Prosecution has failed to examine its witnesses. Delay in the matter cannot be attributed to

the petitioner. These circumstances persuade us to hold petitioner has been able to make out a case of breach of his fundamental right to speedy trial and he 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.

4. Therefore, the accused/petitioner, namely **Swapan Sarkar**, 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 Sessions Judge, 6th Court, Barasat, North 24-Parganas 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.
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 automatically without reference to this court.
6. The application for bail, thus, stands allowed.
7. We note with concern the prosecution has not produced witnesses in course of schedules fixed by the trial court. All the witnesses are official witnesses who were members of the raiding party. No explanation is forthcoming why the said officials did not attend and depose during trial.
8. Superintendent of Police, North 24-Parganas is directed to make an enquiry with regard to the indolent conduct of the police officials who

¹ 2023 SCC OnLine SC 1109

were members of the raiding party and submit an explanation on the adjourned day why they did not attend court proceeding resulting in inordinate delay in trial.

9. Department is directed to communicate this order to the Superintendent of Police, North 24-Parganas for due compliance.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)