

07.02.2024
Sl. No.15
akd
[ALLOWED]

C. R. M. (NDPS) 244 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 01.02.2024 in connection with Bharatpur Police Station Case No.69 of 2021 dated 10.03.2021 under Sections 21(c)/29 of the NDPS Act.

And

In Re: **Arif Sk.**

... .. Petitioner

Mr. Tapodip Gupta
Mr. Suman Bhanja

... .. for the petitioner

Mr. Binay Kumar Panda
Mr. Subham Kanti Bhakat

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for about two years and ten months. 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 bail prayer of the petitioner was rejected on merits in May, 2023.
3. We have considered the materials on record. Bail prayer of the petitioner was rejected on merits in May, 2023. However, he is in custody for about three years and prosecution has not examined any witness till date. This discloses indolence on the part of the prosecution to examine witnesses. 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 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 ***Arif Sk.***, 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, 2nd 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.
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.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109