

13.02.2024
Sl. No.18
akd
[ALLOWED]

C. R. M. (NDPS) 289 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 02.02.2024 in connection with Sagardighi Police Station Case No.488 of 2021 dated 21.12.2021 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.288 of 2021)

And

In Re: ***Madhav Mondal***

... .. Petitioner

Ms. Shabana Hasin

... .. for the petitioner

Mr. Aniket Mitra

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for about two years and one month. 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 09.08.2023. He approached the Hon'ble Apex Court but subsequently withdrew his prayer. Date has been fixed for recording evidence on and from 22.02.2024.
3. We have considered the materials on record. A large volume of narcotics i.e. *phensedyl syrup* was recovered from the petitioner. Under such circumstances, his bail prayer was rejected on merits in August, 2023. Even the Hon'ble Apex Court did not consider the petitioner's bail prayer favourably. Presently petitioner prays for bail on the ground of delay in trial. Though two schedules were fixed, one in July, 2023 and another in November, 2023, for reasons best known to the prosecution, no witness was produced. Petitioner has suffered incarceration for more than two years. Prosecution

proposes to examine nine witnesses in all. There is little possibility of trial concluding in the near future. 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 ***Madhav Mondal***, 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.
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

