

01.03.2024

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Allowed

C.R.M. (NDPS) No. 315 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Raiganj Police Station Case No. 411 of 2020 dated 29.05.2020 under Sections 21(c)/22(c)/27/29 of the N.D.P.S. Act.

And

In Re : Khurshed Ali @ Khurshed Alam petitioner

Mr. Jayanta Narayan Chatterjee
Mrs. Moumita Pandit
Mr. Supreem Naskar
Ms. Jayshree Patra
Ms. Pritha Sinha

.... for the petitioner

Mr. Avishek Sinha

.... for the State

1. Learned Counsel for the petitioner submits he is in custody for more than three years and eight months. Only two out of eighteen witnesses have been examined. Accordingly, he prays for bail.

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

3. We have considered the materials on record. It is alleged 868 gms. of Brown Sugar i.e. Heroin was recovered from a toto. Petitioner and co-accused were in the toto. As the quantity of narcotics recovered is above commercial quantity his bail prayer came to be rejected on merits earlier. But petitioner has been in detention for more than three years and eight months. Only two out of eighteen witnesses have been examined. There is little possibility of trial concluding in the

near future. Petitioner is not responsible for the delay and is entitled to bail on this score. 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. Hence, we are inclined to grant bail to the petitioner.

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, Raiganj, Uttar Dinajpur, subject to condition that 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.

5. In the event petitioner 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.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC OnLine SC 1109