19.02.2024.
31.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 328 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No.137 of 2021 arising out of Burwan P. S. Case No.192 of 2021 dated 12.07.2021 under Sections 20(b)(ii)(c)/29 of the NDPS Act.

In the matter of : **Solim Khan @ Kha & Anr**.

.... Petitioners.

Mr. Anisur Rahman.

...for the Petitioners.

Mr. Koushik Kundu.

...for the State.

1. Petitioners are in custody for more than two years and seven months. They submit there is delay in trial. Accordingly, they pray for bail.

2. Learned Advocate for the State opposes the bail prayer. He submits five witnesses have already been examined.

3. We have considered the materials on record. 29.500 kgs. of ganja was recovered from the petitioners. Though the recovery of narcotics is above commercial quantity, petitioners have suffered incarceration for a considerable period of time. Only five out of ten witnesses have been examined. Delay is not attributable to the defence. There is no possibility of trial concluding in the near future.

4. Under such circumstances, we are of the opinion petitioners have 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].

5. Hence, we are inclined to grant bail to the petitioner.

6. Accordingly, the petitioners viz., **Solim Khan @ Kha and Hibraj Sk** shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under the N.D.P.S. Act, Berhampore, Murshidabad subject to condition that they 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.

7. In the event petitioners fail to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

8. This application for bail is, thus, disposed of.

(Gaurang Kanth,J.) **(Joymalya Bagchi, J.)**

[1] (2023) SCC Online SC 1109