

23.02.2024
Sl. No.7
akd
[ALLOWED]

C. R. M. (NDPS) 349 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 16.02.2024 in connection with Sagardighi Police Station Case No.394 of 2021 dated 12.10.2021 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.239 of 2021)

And

In Re: **Badrul Sk.**

... .. Petitioner

Mr. Debanshu Ghorai
Mr. Anisur Rahman

... .. for the petitioner

Mr. S. S. Imam
Mr. Palash Ch. Majhi

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for more than two years and four 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 date has been fixed for recording evidence.
3. We have considered the materials on record. Narcotics i.e. 100 bottles of *phensedyl syrup*, which is above commercial quantity was recovered from the petitioner. However, he has prayed for bail on the ground of delay in trial. Though petitioner is in custody for more than two years and four months, no prosecution witness has been examined till date. Prosecution proposes to examine ten witnesses in all. Delay in the matter cannot be attributed to the petitioner. There is no 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 ***Badrul 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, 5th Court, Murshidabad at Berhampore 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