

10.04.2024.
08.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 392 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NDPS Case No.19 of 2022 arising out of Khargram P.S. Case No.30 of 2022 dated 11.01.2022 under Sections 21(c)/29 of the NDPS Act and charge sheet filed under Sections 21(c)/29 of the NDPS Act.

In the matter of : **Munsur Sk. @ Mansur Sk. @
Munsur Sekh.**

.... Petitioner.

Mr. Navanil De,
Ms. Monami Mukherjee.

...for the Petitioner.

Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Asif Dewan.

...for the State.

1. Petitioner is in custody for two years and three months. He contends there is slow progress in trial. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the bail prayer. He contends trial could not progress as the Case Diary was before this Court.
3. We have considered the materials on record. Petitioner is in custody for a considerable period of time. During hearing of the bail application on 01.03.2024, we were informed on behalf of the State that next schedule has been fixed on and from 1st April, 2024. To test the *bona fides* of the prosecution in conducting speedy trial, we adjourned the hearing of the matter till today. Presently, we are informed trial did not progress as the Case Diary had not been sent down. This shows callous indifference and poor co-ordination between the Public

Prosecutor attached to this Court and the trial court. For this, petitioner who is incarcerated for more than two years cannot suffer. Prosecution proposes to examine eleven witnesses. There is little possibility of trial concluding in the near future.

4. Under such circumstances, we are of the opinion petitioner has 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 petitioner viz., **Munsur Sk. @ Mansur Sk. @ Munsur Sekh** 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 the N.D.P.S. Act, Berhampore, Murshidabad subject to condition that he 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 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.

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

(Gaurang Kanth,J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine 1109

