

20.03.2024.

11.

Ct.No.28.

as

(Allowed)

C.R.M. (NDPS) 405 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection Special Case No.74 of 2022 arising out of Baishnabnagar P. S. Case No.413 of 2022 dated 18.05.2022 under Section 27(a) of the Drugs and Cosmetics Act along with Section 21(c) of the NDPS Act.

In the matter of : **Mohibur Sk. @ Kalu @ Kalu Sk.**
.... Petitioner.

Mr. Krishnendu Bhattacharya,
Mr. Santanu Talukdar,
Mr. Priyankar Ganguly.
...for the Petitioner.

Mr. Pinak Kr. Mitra.
...for the State.

1. Petitioner is in custody for one year and ten months. He submits charge has not yet been framed. Accordingly, he prays for bail on the ground of delay.
2. Learned Advocate for the State opposes the bail prayer. He submits charge shall shortly be framed.
3. We have considered the materials on record. 375 bottles of phensedyl syrup were recovered from a jeep. Co-accused who were in the jeep were arrested. Pursuant to their statements, petitioner was arrested and 25 bottles of phensedyl syrup were recovered from his possession. Allegations are grave and any prayer for bail on merits would attract statutory restrictions under Section 37 of the NDPS Act. But petitioner has prayed for bail on the ground of delay. He is in custody for one year and ten months. Charge has not yet been framed.

4. During hearing of the bail application, we were informed date for consideration of charge was fixed on 14th March, 2024. To give an opportunity to the prosecution and to show its bona fides to proceed expeditiously, this Court adjourned the hearing till today. Unfortunately, charge was not framed on the aforesaid date due to change of Public prosecutor. Delay in the matter is not attributable to the petitioner. As charge has not been framed till date and prosecution proposes to examine 18 witnesses, we are not hopeful that trial shall conclude in the near future.

5. 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. Reference in this regard may be made to *Rabi Prakash Vs. The State of Odisha*¹.

6. Hence, he may be enlarged on bail.

6. Accordingly, the petitioner viz., **Mohibur Sk. @ Kalu @ Kalu Sk** 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 NDPS Act, Malda 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.

¹ 2023 SCC OnLine SC 1109

7. In the event the 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.)