

07.03.2024

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Allowed

C.R.M. (NDPS) No. 452 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Minakhan Police Station Case No. 19 of 2022 dated 28.01.2022 under Sections 21(c)/29 of the N.D.P.S. Act.

And

In Re : Mahiuddin Molla & Anr. petitioners

Mr. Pronojit Roy

.....for the petitioners

Ms. Subhasree Patel

.....for the State

1. Learned Counsel for the petitioners submits they are in custody for 769 days. There is delay in trial. Accordingly, they pray for bail.

2. Learned Counsel for the State opposes the bail prayer and submits trial is in progress.

3. We have considered the materials on record. Though 10 liters of Codeine Mixture were recovered from the petitioners, only four witnesses have been examined. Petitioners are not responsible for the delay and are entitled to bail on the score of breach of their fundamental right to speedy 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. Hence, we are inclined to grant bail to the petitioners.

4. Accordingly, we direct that the petitioners 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

¹ (2023) SCC Online SC 1109

local, to the satisfaction of the learned Judge, Special Court under NDPS Act-cum-learned Additional Sessions Judge, 6th Court, Barasat at North 24-Parganas, subject to condition that petitioners 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 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.

6. The application for bail is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)