

08.03.2024

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Allowed

C.R.M. (NDPS) No. 457 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with English Bazar Police Station Case No. 1084 of 2021 dated 30.08.2021 under Sections 21(c)/29 of the N.D.P.S. Act and charge-sheet submitted under Sections 21(c)/29 of the N.D.P.S. Act.

And

In Re : Sk. Rejaul petitioner

Mr. Sujoy Sarkar

Mr. Musharraf Alam Sk.

Mr. Rahul Chachan

Ms. Susmita Ghorai

.... for the petitioner

Ms. Sonali Das

.... for the State

1. Learned Counsel for the petitioner submits he is in custody for more than two years. There is slow progress in trial. Co-accused Md. Tafiquil was enlarged on bail. Accordingly, he prays for bail.

2. Learned Counsel for the State opposes the bail prayer and submits bail was granted to co-accused Md. Tafiquil on the erroneous submission that he is in custody for more than three years. Actually he was in custody for two years and five months.

3. We have considered the materials on record. Petitioner is in custody for around two and half years. Only two out of nine witnesses have been examined till date. There is no possibility of trial concluding in the near future. Under such

circumstances, petitioner has made 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. Hence, we are inclined to grant bail to the petitioner.

4. Accordingly, we direct that the petitioner 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 NDPS Act-cum-learned Additional Sessions Judge, 3rd Court, Malda, subject to condition that 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.

5. 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.

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

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC Online SC 1109

