

19.03.2024
Sl. No.12
akd
[ALLOWED]

C. R. M. (NDPS) 478 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 05.03.2024 in connection with Bhagwangola Police Station Case No.191 of 2022 dated 27.03.2022 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.78 of 2022)

And

In Re: ***Asarul Hoque @ Asha***

... .. Petitioner

Mr. Tanmoy Biswas
Mr. Amit Roy
Ms. Puja Kar
Ms. Antara Mukherjee

... .. for the petitioner

Mr. Saryati Datta

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for about two years and two 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 charge has been framed and recording of evidence will commence shortly.
3. We have considered the materials on record. Though narcotics i.e. 17 bottles of *phensedyl syrup* containing *codeine phosphate*, which is above commercial quantity was recovered from the petitioner and co-accused, petitioner is in custody for more than two years. No prosecution witness has been examined till date. Delay in the matter cannot be attributed to the petitioner. Prosecution proposes to examine twelve witnesses in all. There is no likelihood 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 of breach of his fundamental right to speedy

trial and 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.

5. Therefore, the accused/petitioner, namely ***Asarul Hoque @ Asha***, 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 & Sessions Judge, 2nd Court, Berhampore, Murshidabad 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.
6. 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.
7. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109