

19.03.2024
Sl. No.9
akd
[ALLOWED]

C. R. M. (NDPS) 476 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 04.03.2024 in connection with Malda Police Station Case No.556 of 2021 dated 12.11.2021 under Sections 21(c)/29 of the NDPS Act read with Sections 18(b)/27 of the Drugs and Cosmetics Act, 1940.

And

In Re: ***Mansoor & Anr.***

... .. Petitioners

Mr. Mrityunjoy Chatterjee
Mr. Debapriya Majumder

... .. for the petitioners

Mr. Sandip Chakraborty

... .. for the State

1. It is submitted on behalf of the petitioners that they are in custody for about 2½ years. It is further submitted there is slow progress in trial. Accordingly, they pray for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits bail prayer of the petitioners was rejected by this court as well as the Hon'ble Apex Court in 2022. Thereafter, trial could not progress due to a stay order passed by a learned Single Judge of this court in CRR 4110 of 2022.
3. In view of the aforesaid submission, notice was issued upon the co-accused viz. Asif Mohammad who had obtained the stay.
4. We have considered the materials on record. A large volume of narcotics i.e. 20,000 bottles of *phensedyl syrup* were recovered from the petitioners. They were travelling in a truck. On their statement further recovery of 3000 bottles of *phensedyl syrup* were made from a godown in control of co-accused viz. Sam Saha @ Shyam Saha @ Shyamal Saha. There are ample materials implicating the petitioners in the crime. Their bail prayer was rejected on merits

earlier by this court as well as the Hon'ble Apex Court. Presently, petitioners have prayed for bail on the ground there is no progress in trial.

5. We have considered the order sheets of the trial court annexed to the application. We note one of the co-accused has absconded and has been declared a proclaimed offender in September, 2022. Thereafter, dates were fixed for consideration of charge but charge has not yet been framed.
6. State contends case could not proceed due to a stay order passed by this court in CRR 4110 of 2022. In the said revision, trial was stayed *qua* the co-accused viz. Asif Mohammad and as such there was no embargo in proceeding against other co-accused including the petitioners. In fact the trial Judge had fixed dates for consideration of charge but no steps were taken by the prosecution in that regard. This shows delay in the matter was not due to systemic reasons but owing to failure on the part of the prosecution to show promptness. Petitioners are not responsible for the delay. Prosecution proposes to examine twelve witnesses in all. There is little possibility of trial concluding in the near future.
7. Under such circumstances, we are of the opinion petitioners have been able to make out a case of breach of their fundamental right to speedy trial and are 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.
8. Therefore, the petitioners, namely **(1) Mansoor & (2) Arif @ Md. Arif**, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties of like amount

¹ 2023 SCC OnLine SC 1109

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, 3rd Court, Malda subject to condition that the said 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 or commit similar offences in future and on further condition that the petitioners, while on bail, shall remain within the district of Malda and shall provide the address where they shall presently reside to the Investigating Agency as well as the court below and shall meet the Officer-in-charge, Malda Police Station once in a week until further orders.

9. In the event they fail to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel their bail automatically without reference to this court.

10. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)