

15.03.2024
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allowed

CRM(NDPS) No. 511 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Baishnabnagar Police Station Case No. 123 of 2022 dated 04.02.2022 under Sections 22(c)/ 29 of the NDPS Act.

And
In Re : Mostafa Sk. petitioner

Mr. Amitabha Karmakar
Mr. Arup Kumar Bhowmick
....for the petitioner

Mr. Rudradipta Nandy, learned APP
Mr. Sujoy Sarkar
.... for the State

1. Learned Counsel for the petitioner submits he is in custody for more than two years. No witness has been examined as yet. There is delay in trial. He prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits delay was due to absence of the Presiding Officer.

3. We have considered the materials on record. Though 1.166 kgs. of Amphetamine (above commercial quantity) was recovered from the petitioner he is incarcerating for more than two years. No witness has been examined as yet. It is true Presiding Officer was absent on the last date but no explanation is forthcoming with regard to slow progress in the matter for the last two years which resulted in prolonged detention of the petitioner. Petitioner has not contributed to the delay. Prosecution proposes to examine eleven witnesses. There is little

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, 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