

28.03.2024

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Allowed

C.R.M. (NDPS) No. 552 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Berhampore Police Station Case No. 130 of 2022 dated 29.01.2022 under Sections 21(c)/29 of the N.D.P.S. Act.

And

In Re : Mursalim Sk. @ Town petitioner

Ms. Shabana Hasin

Ms. Samima Akter Banu

Ms. Neha Roy

.... for the petitioner

Mr. Pravas Bhattacharya

Ms. Puja Goswami

.... for the State

1. Learned Counsel for the petitioner submits he is in custody for more than two years. It is also submitted there is inordinate delay in trial. Accordingly, he prays for bail.

2. Learned Counsel for the State opposes the bail prayer.

3. We have considered the materials on record. Eight liters of Codeine Mixture was recovered from the petitioner. However, he is in custody for a protracted period of time. Charge has not yet been framed. Prosecution proposes to examine thirteen witnesses. There is no possibility of trial concluding in the near future. Delay in the matter is not attributable to the defence. Under such circumstances, petitioner has made out a case for bail on the ground of delay in

trial which infracts fundamental right to speedy justice of the petitioner. 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-Additional District Judge, 5th Court, Berhampore, Murshidabad,, 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.

(Partha Sarathi Sen, J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC Online SC 1109

