

02.04.2024.  
10.  
Ct.No.28.  
as  
(Allowed)

**C.R.M. (NDPS) 565 of 2024**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with N Case No.15 of 2022 arising out of Naihati P. S. Case No.81 of 2022 dated 20.02.2022 under Section 21(C) of the NDPS Act.

In the matter of : **Santu Das @ Avi.**

.... Petitioner.

Ms. Minoti Gomes.

...for the Petitioner.

Mr. Rahul Ganguly.

...for the State.

1. Petitioner is in custody for more than two years. He submits there is delay in trial. He contends independent witnesses have not supported the prosecution case. Accordingly, he prays for bail.

2. Learned Advocate for the State opposes the bail prayer. He contends three out of nine witnesses have been examined.

3. We have considered the materials on record. 1.6 kgs. of codeine mixture was recovered from the possession of the petitioner. However, he is in custody for more than two years and only three witnesses have been examined. Independent witnesses have not supported the prosecution case. Delay in the matter cannot be attributed to the defence. There is little possibility 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 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***<sup>1</sup>.

5. Hence, we are inclined to grant bail to the petitioner.

6. Accordingly, the petitioner viz., **Santu Das @ Avi** 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 the N.D.P.S. Act, Barrackpore, North 24-Paraganas subject to condition that he 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.

7. 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.

8. This application for bail is, thus, disposed of.

**(Gaurang Kanth,J.)**

**(Joymalya Bagchi, J.)**

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<sup>1</sup> 2023 SCC OnLine SC 1109