

C. R. M. (NDPS) 568 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 21.03.2024 in connection with Chakulia Police Station Case No.30 of 2022 dated 03.02.2022 under Section 21(c) of the NDPS Act. (NDPS Case No.12 of 2022)

And

In Re: **Mukesh Kumar**

... .. Petitioner

Mr. Pronojit Roy

... .. for the petitioner

Mr. Santanu Talukdar

... .. 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. Report is placed on record.
3. Learned Advocate for the State opposes the prayer for bail and submits two out of five witnesses have been examined.
4. We have considered the materials on record. Though narcotics i.e. 150 bottles of *cough syrup* containing *codeine phosphate*, which is above commercial quantity was recovered from the petitioner, he is in custody for more than two years. Two out of five witnesses have been examined till date. Delay in the matter cannot be attributed to the petitioner. There is little possibility of trial concluding in the near future. 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 he 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 ***Mukesh Kumar***, 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, Raiganj, Uttar Dinajpur 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 and on further condition that the petitioner, while on bail, shall remain within the district of Uttar Dinajpur and shall provide the address where he shall presently reside to the Investigating Agency as well as the court below and shall report to the Officer-in-charge, Chakulia Police Station once in a week until further orders.
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