

03.04.2024.
10.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 579 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with N. Case No.173 of 2021 arising out of Matia P. S. Case No.497 of 2021 dated 18.12.2021 under Section 21(C) of the NDPS Act.

In the matter of : **Atikur Rahaman.**

.... Petitioner.

Mr. Angshuman Chakraborty,
Mr. S. S. Saha.

...for the Petitioner.

Mr. Sudip Kumar,
Mr. Mainak Gupta.

...for the State.

1. Petitioner is in custody for more than two years and three months. There is slow progress in trial. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the bail prayer. He contends four witnesses have been examined. Delay is due to systemic reasons.
3. We have considered the materials on record. Though 5.2 ltrs of codeine mixture above commercial quantity was recovered, petitioner is in custody for more than two years. Only four out of ten witnesses have been examined. Delay in the matter is not attributable to the petitioner. There is little possibility of trial concluding in the near future.
4. Under such circumstances, we are of the opinion petitioner has made out a case for bail on the ground of breach of his fundamental right to speedy trial under Article 21 of the Constitution of India. He is entitled to bail on this score. Bail

prayer on the ground of 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. Hence, we are inclined to grant bail to the petitioner.

6. Accordingly, the petitioner viz., **Atikur Rahaman** 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, Barasat, 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.)

¹ 2023 SCC OnLine SC 1109