

C. R. M. (NDPS) 586 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 19.03.2024 in connection with Bongaon Police Station Case No.574 of 2017 dated 07.06.2017 under Sections 21(c)/29 of the NDPS Act.

And

In Re: ***Dipak Adhikary @ Deepak Adhikari @ Babu***
... .. Petitioner

Mr. Angshuman Chakraborty
Mr. Shashanka Shekhar Saha
... .. for the petitioner

Mr. Saryati Datta
Mrs. Manasi Roy
... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for more than six years. It is further submitted there is inordinate delay in trial. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits delay is engineered by the defence. Co-accused who was enlarged on bail has absconded.
3. We have considered the materials on record. Though narcotics i.e. 10 ltrs. of *codeine mixture*, which is above commercial quantity was recovered from the petitioner and co-accused, petitioner is in custody for more than six years. Only two out of eight witnesses have been examined till date. There is little possibility of trial concluding in the near future. Abscondence of co-accused cannot be a reason to deny bail to the petitioner. 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.

4. Therefore, the accused/petitioner, namely ***Dipak Adhikary @ Deepak Adhikari @ Babu***, 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-cum-Additional Sessions Judge, 6th Court, Barasat, North 24-Parganas 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 jurisdiction of Bongaon Police Station and shall report to the Officer-in-charge, Bongaon Police Station once in a week until further orders.
5. 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.
6. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109