

C. R. M. (NDPS) 628 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 01.04.2024 in connection with Kaliachak Police Station Case No.229 of 2022 dated 25.02.2022 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.37 of 2022)

And

In Re: **Soleman Sk.**

... .. Petitioner

Mr. Sagar Saha

... .. for the petitioner

Ms. Anasuya Sinha
Mr. Debangsu Ghosh

... .. 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. From the report it appears examination of PW 1 is in progress.
3. Learned Advocate for the State opposes the prayer for bail.
4. We have considered the materials on record. Though narcotics i.e. 300 gms. of *brown sugar*, which is above commercial quantity was recovered from the petitioner and co-accused, petitioner is in custody for more than two years. Only one witness has been examined in part. Delay in the matter cannot be attributed 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.

5. Therefore, the accused/petitioner, namely ***Soleman Sk.***, 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 District Judge, 4th Court, Malda 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.
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