

12.04.2024
Sl. No.12
akd
[ALLOWED]

C. R. M. (NDPS) 638 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 02.04.2024 in connection with Farakka Police Station Case No.222 of 2021 dated 19.08.2021 under Sections 20(b)(ii)(c)/29 of the NDPS Act. (NDPS Case No.172 of 2021)

And

In Re: ***Krishna Basak & Anr.***

... .. Petitioners

Ms. Shabana Hasin
Ms. Samima Akter Banu

... .. for the petitioners

Md. Kutubuddin

... .. for the State

1. It is submitted on behalf of the petitioners that they are in custody for about two years and seven months. It is further submitted there is inordinate delay in trial. Accordingly, they pray for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits bail prayer of the petitioners was rejected earlier on merits.
3. We have considered the materials on record. Though narcotics i.e. 26 kgs. of *Ganja* was recovered from the petitioners, they are in custody for about two years and seven months. Bail prayer of the petitioners was rejected earlier on merits. Presently, they pray for bail on the ground of delay in trial. No witness has been examined till date. No explanation is forthcoming from the prosecution why they failed to examine witnesses. Under such circumstances, we are of the opinion petitioners have been able to make out a case of breach of their fundamental right to speedy trial and they are 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 petitioners, namely ***(1) Krishna Basak & (2) Ujjal Basak @ Parimal Basak***, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only) each, 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, 5th Court, Berhampore, Murshidabad subject to condition that the said petitioners 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.
5. In the event they fail to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel their 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