

19.04.2024

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Allowed

C.R.M. (NDPS) No. 636 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with NCB Crime No. 7 of 2019 under Section 8(c) read with Section 22(c) and Section 29 of the N.D.P.S. Act.

And
In Re : Afruza Bibi @ Afruja petitioner

Mr. Kaushik Choudhury
Ms. Busra Khatun
.... for the petitioner

Mr. Arun Kumar Maity (Mohanty)
Mr. R. R. Mohanty
.... for the NCB

1. Learned Counsel for the petitioner submits she is in custody for five years. There is inordinate delay in trial. Accordingly, she prays for bail.

2. Learned Counsel for the NCB submits delay was due to deferment of cross-examination of prosecution witnesses by the defence. Four prosecution witnesses have been examined in full. Cross-examination of two more witnesses is awaited. Three more witnesses are to be examined.

3. We have considered the materials on record. 1.4 kgs. of Yaba Tablets were recovered from the petitioner. Her prayer for bail was rejected earlier on merits. On the score of delay in trial she is in custody for five years and there is no possibility of trial concluding in the near future. It is true some part of the delay was due to deferment of cross-examination of

prosecution witnesses. However, witnesses also failed to turn up during the schedules fixed for recording evidence. Petitioner is in custody for five years. Further detention would infract her fundamental right to speedy trial. Under such circumstances, petitioner has made out a case for bail on the ground of delay in trial. Bail prayer on the ground of delay in trial is not fettered by restrictions under Section 37 of the NDPS Act as held in ***Rabi Prakash Vs. State of Odisha***¹. Hence, we are inclined to grant bail to the petitioner.

4. Accordingly, we direct that the petitioner 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 NDPS Act-cum-Additional District Judge, 3rd Court, Balurghat, Dakshin Dinajpur, on further condition that petitioner shall remain within the district of Dakshin Dinajpur until further orders except for the purpose of attending court proceeding and shall report to the Officer-in-Charge of the concerned Police Station once in a week until further orders. She 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.

5. In the event petitioner fails to appear before the trial court without any justifiable cause, the trial court shall be at

¹ (2023) SCC Online SC 1109

liberty to cancel her bail in accordance with law without further reference to this Court.

6. The application for bail is, accordingly, allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)