

22.04.2024.
09.
Ct.No.28.
as
(Allowed)

C.R.M. (NDPS) 657 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with English Bazar P.S. Case No.802 of 2020 dated 08.09.2020 under Sections 22(C)/29 of the NDPS Act.

In the matter of : **Babor Sk. & Anr.**

.... Petitioners.

Mr. Arup Kr. Bhowmick.

...for the Petitioners.

Mr. Iqbal Kabir,

Mr. Santanu Deb Roy.

...for the State.

1. Petitioners have renewed their prayer for bail on the ground of delay in trial. They contend inspite of direction given by his Court to conclude trial preferably within one year vide order dated 04.04.2023 in CRM (NDPS) 637 of 2023, only one witness has been examined till date.

2. Learned Advocate for the State opposes the bail prayer. He submits report. He contends delay was due to systemic reasons i.e. non-availability of presiding officer.

3. We have considered the materials on record. 305 gms of heroin was recovered from petitioners. However, he is in custody for more than three years. His bail prayer was rejected earlier in April, 2023 and trial court was requested to conclude the trial preferably within one year. Till date one witness has been examined. Perusal of the report shows on two dates i.e. 25.09.2023 and 12.12.2023 presiding officer was on leave, but on other dates prosecution failed to produce witnesses before the trial court.

4. Hence, it cannot be said that delay is solely due to systemic reasons. Prosecution is equally lax to examine witnesses promptly. Petitioners have not contributed to the delay.

4. Under such circumstances, we are of the opinion petitioners have been able to make 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

5. Hence, we are inclined to grant bail to the petitioners.

6. Accordingly, the petitioners viz., **Babor Sk. and Rubel Sk @ Liton Sk.** shall be released on bail upon furnishing a bond of Rs.10,000/- 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, Malda subject to condition that they 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 petitioners fail to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel their 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 1109

