

26.04.2024

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Allowed

C.R.M. (NDPS) No. 721 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Matia Police Station Case No. 57 of 2022 dated 19.02.2022 under Section 21(c) of the N.D.P.S. Act.

And

In Re : Alauddin Gazi Mondal @ Sahin petitioner

Mr. Kamalesh Chandra Saha

Ms. Ankita Dey

.... for the petitioner

Mr. Bitasok Banerjee

Mr. Asif Dewan

.... for the State

1. Learned Counsel for the petitioner submits he is in custody for more than two years. It is also submitted there is slow progress in trial. Accordingly, he prays for bail.

2. Learned Counsel for the State opposes the bail prayer and submits two out of eight witnesses have been examined.

3. We have considered the materials on record. Over 5 liters of codeine mixture was recovered from the joint possession of the petitioner and co-accused. However, he is in custody for more than two years. Only two out of eight witnesses have been examined. Delay in the matter is not attributable to the petitioner. There is no possibility of trial concluding in the near future. 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 Sessions Judge, 6th Court, Barasat, North 24-Parganas, subject to condition that 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.

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

¹ (2023) SCC Online SC 1109