

30.04.2024
Sl. No.14
akd
[ALLOWED]

C. R. M. (NDPS) 736 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 22.04.2024 in connection with Bally Police Station Case No.49 of 2022 dated 25.03.2022 under Section 21(c) of the NDPS Act.

And

In Re: ***Nabin Upadhyay***

... .. Petitioner

Mr. Pawan Kumar Gupta
Ms. Sofia Nesar
Mr. Santanu Sett

... .. for the petitioner

Mr. Kunal Ganguly

... .. for the State

1. It is submitted on behalf of the petitioner that he is in custody for more than two years. It is further submitted only one witness has been examined in part. Accordingly, he prays for bail.
2. Learned Advocate for the State opposes the prayer for bail.
3. We have considered the materials on record. Though narcotics i.e. 3 ltrs. of *codeine mixture* was recovered from the petitioner, he is in custody for more than two years. Progress in trial is not appreciable. Only one witness has been examined in part. Prosecution proposes to examine eleven witnesses in all. Delay in the matter cannot be attributed to the petitioner. There is little possibility of trial concluding in the near future. 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.

4. Therefore, the accused/petitioner, namely ***Nabin Upadhyay***, 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 & Sessions Judge, 3rd Court, Howrah 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.
5. 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.
6. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

¹ 2023 SCC OnLine SC 1109