

09.05.2024

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Allowed

C.R.M. (NDPS) No. 783 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Itahar Police Station Case No. 97 of 2022 dated 15.02.2022 under Section 20(b)(ii)(c) of the N.D.P.S. Act.

And
In Re : Ajrul Sarkar @ Natu petitioner

Mr. Soumyajit Das Mahapatra
Mr. Tapodip Gupta
.... for the petitioner

Mr. Koushik Kundu
Ms. Jonaki Saha
.... 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 delay in trial. Accordingly, he prays for bail.

2. Learned Counsel for the State opposes the bail prayer and submits co-accused had absconded for a considerable period of time which contributed to the delay.

3. We have considered the materials on record. It is alleged 26 kgs. of Ganja was recovered from a Bolero truck. Petitioner was present in the truck. Owner of the truck had absconded and there was some delay. However, charges were framed in July, 2023. Till date only one witness has been examined. This does not demonstrate adequate urgency on the part of the prosecution to proceed with trial. Under such circumstances, petitioner has made out a case for bail on the

ground of delay in trial which infracts his fundamental right to speedy justice under Article 21 of the Constitution of India. 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 & Sessions Judge, 1st Court, Raiganj, Uttar Dinajpur, 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.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

¹ (2023) SCC Online SC 1109