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11-06-2024
(ct. no.28)
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CRM (NDPS) 871 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Samsherganj Police Station** Case No. **179 of 2022** dated **23.05.2022** under Sections **21(c)/29** of the NDPS Act.

- A n d -

In the matter of : Saddam Hossain

.... Petitioner.

Ms. Shabana Hasin,
Ms. S. Akter Basu,

... For the Petitioner.

Md. Iqbal Kabir,
Mr. S. Saha,

... For the State.

The petitioner is one of the two accused persons. The allegation is that 625 bottles of phensedyl syrup containing codeine potassium, were recovered from this petitioner. That is commercial quantity of contraband.

The petitioner says that he is in custody for more than two years. He had approached the Hon'ble Apex Court for bail. By an order dated October 19, 2023, the Hon'ble Apex Court passed the following directions:

“Having heard the learned counsel appearing for the petitioner at considerable length and after carefully perusing the material placed on record, the Court is of the opinion that all contentions including the failure of the police to comply with terms of Section 50 of the N.D.P.S Act can be argued before the trial court, during the proceedings, requiring framing of charges.

If such submissions are made by petitioners, the trial court would consider the same on merits, along with other circumstances and pass the order on charge, as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order.”

The aforesaid order was communicated to the learned Trial Court. However, still charge has not been framed.

Learned Advocate for the State says that charge could not be framed as two other accused persons are absconding and their presence could not be secured.

We have considered the rival contentions of the parties. We are not happy with the explanation advanced on behalf of the State. If two accused persons are absconding, it was open to learned Trial Court to split up the trial after following due procedure. What is important is that the Hon'ble Apex Court by its order dated October 19, 2023 observed that the charge should be framed as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of this order. Copy of that order of the Hon'ble Apex Court was received by the Learned Trial Court latest on January 4, 2024. Four months have elapsed since then.

Accordingly, we are inclined to enlarge the petitioner on bail. This we also do since we are of the view that inordinate delay in progress of trial results in breach of a citizen's fundamental right to receive speedy justice. In such a case, Section 37 of the NDPS Act would not stand in the way.

Accordingly, we direct that the petitioner, namely, **Saddam Hossain**, shall be released on bail upon furnishing a bond of Rs. 25,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Special Judge under the NDPS Act-cum-Additional District Judge, 5th Court, Berhampore, Murshidabad and on further conditions that he shall not leave the

jurisdiction of the concerned police station and shall report to the Officer-in-Charge of the concerned police station once in a fortnight until further orders. The petitioner shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.

The application for bail is, accordingly, allowed.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)