

16.07.2024
Item no. 8.
Court No.28.
AB
(Allowed)

CRM (NDPS) 999 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Special Case No.27 of 2019 arising out of NCB Crime No.22 of 2019 under Sections 21C/23/25/29 of the NDPS Act

And

In the matter of : Somo @ Soumo Sarkar

.....Petitioner.

Mr. Pulokesh Bajpayee,
Mr. Kunal Gangulyfor the Petitioner.

Mr. Arun Kr. Maiti (Mohanty)
Mr. Rishiraj R. Mohantyfor the NCB.

Report filed on behalf of the NCB, be kept with the records.

Mr. Maity, learned Advocate appearing for the NCB says that for the delay in progress of the trial, the prosecution cannot be made responsible. Even the defence on certain dates obtained adjournments. The major part of the delay is due to systemic reason. A huge quantity of contraband item was seized from this petitioner and other accused persons. The prayer for bail should not be allowed.

It is true that 24000 bottles of phensedyl was seized from the accused persons including this petitioner. We are also conscious of the restriction in Section 37 of the NDPS Act. However, we cannot be oblivious of a citizen's fundamental right

to speedy trial and personal liberty as contemplated by Article 21 of the Constitution of India. Such valuable right of a citizen must override all considerations including the restriction in Section 37 of the NDPS Act. The petitioner has been in custody for close to five years. Not a single witness has been fully examined. We are told that one witness has been examined in part.

Even if we accept the argument of Mr. Maity that the delay was basically due to systemic reason, it follows that such systemic delay cannot be ruled out in the future also. The system needs to be changed. For the present, we do not see how the trial will conclude at an early date. Five years is far too long a time to keep an under-trial in custody on the ground that the trial is pending.

Purely on the ground of delay in progress of the trial, we grant bail to the petitioner.

Accordingly, we direct that the petitioner, namely **Somo @ Soumo Sarkar** 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 Judge, Special Court under the NDPS Act at Malda, 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 and/or commit any cognizable offence 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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)