

12.09.2024
Sl. No.71
akd
[Rejected]

C. R. M. (NDPS) 1434 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed on 03.09.2024 in connection with Jalangi Police Station Case No.223 of 2022 dated 04.07.2022 under Sections 21(c)/29 of the NDPS Act. (NDPS Case No.164 of 2022)

And

In Re: ***Mominul Sk.***

... .. Petitioner

Mr. Anisur Rahman

... .. for the petitioner

Mr. Bibaswan Bhattacharya

Mr. Dipankar Paramanick

... .. for the State

1. It is submitted on behalf of the petitioner he is in custody for about two years and two months. It is further submitted bail prayer of the petitioner was rejected in July, 2024. Thereafter, co-accused viz. Alamgir Sk. @ Alam Sk. @ Alomgir Sk. has been enlarged on bail by the Hon'ble Apex Court. Accordingly, he renews his prayer for bail.
2. Learned Advocate for the State opposes the prayer for bail and submits narcotics i.e. 3000 bottles of *phensedyl syrup* containing *codeine phosphate* were recovered from the petitioner whereas 99 bottles were recovered from co-accused. Considering the gravity of offence, bail prayer of the petitioner was rejected on merits in July, 2024. While rejecting the bail prayer trial court was directed to conclude trial within one year from the next date fixed for recording evidence. The said time frame has not expired. In the meantime, four witnesses have already been examined.

3. We have considered the materials on record. 3000 bottles of *phensedyl syrup* containing *codeine phosphate* were recovered from the petitioner. In view of gravity of the offence and restrictions under Section 37 of the NDPS Act, his bail prayer was rejected on merits in July, 2024. Addressing the issue of expedition, this court directed the trial court to conclude trial as expeditiously as possible preferably within one year. In the meantime, four witnesses have already been examined.
4. Learned Advocate for the petitioner strenuously argues co-accused viz. Alamgir Sk. @ Alam Sk. @ Alomgir Sk. has been enlarged on bail by the Hon'ble Apex Court. Accordingly, petitioner seeks bail on parity.
5. 99 bottles were recovered from Alamgir Sk. @ Alam Sk. @ Alomgir Sk. whereas 3000 bottles of *phensedyl syrup* were recovered from the petitioner. It is settled law bail on parity is not to be mechanically granted. Role of the accused and the extent of his involvement in the crime are relevant considerations while testing the prayer for bail of an accused on parity vis-a-vis co-accused¹.
6. Applying the said test to the facts of the case we observe recovery of 3000 bottles of *phensedyl syrup* containing *codeine phosphate* from the petitioner renders his role and extent of involvement in the crime on a much graver footing than the co-accused from whom 99 bottles have been recovered. Accordingly, we are persuaded to enlarge the petitioner on bail on parity.
7. On the aspect of delay in trial we note trial has considerably progressed and four witnesses have already been examined.

¹ (2021) 6 SCC 230
(2021) 17 SCC 788

Moreover, the time schedule proposed for conclusion of trial in terms of order dated 08.07.2024 has not yet expired.

8. Under such circumstances, we are not inclined to grant bail to the petitioner at this stage.
9. The application for bail is thus rejected.
10. Trial court is directed to conclude the trial the same as expeditiously as possible without granting unnecessary adjournment to either of the parties.
11. Parties shall communicate a copy of this order to the trial court for due compliance.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)