

CRM (NDPS) 1460 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure/483 of the BNSS in connection with **NCB Crime** Case No. **12/NCB/KOL/2021** dated **07.04.2021** under Section **8(c)/20(b)(ii)(C)/28/29** of the NDPS Act.

- A n d -

In the matter of : Swapan Biswas

.... Petitioner.

Mr. Subhabrata Chowdhury,
Ms. Rishita Ghosh,

... For the Petitioner.

Mr. Anirban Mitra,
Mr. Somnath Adhikary

... For the NCB.

Order dictated by Arijit Banerjee, J.:

1. The petitioner renews his prayer for bail which was rejected at least twice earlier and lastly on August 10, 2022. He says that he is in custody for almost three years four months. The trial is not progressing sufficiently. He has a right to personal liberty and speedy trial which is being infringed.
2. Learned Advocate for NCB files a report. Let the same be kept with the records.
3. We find from the report that 3 out of 8 charge sheet named witnesses have already been examined. The 4th prosecution witness is being cross-examined.
4. 215 kgs of ganja was recovered from the accused persons including this petitioner. Given the huge quantity of contraband involved and the prima facie incriminating material against him, we are not inclined to enlarge the petitioner on bail, immediately.

5. The petitioner relies on a decision of the Hon'ble Apex Court in the case of **Md. Muslim alias Hussain-vs.-State (NCT of Delhi)** reported at **2023 SCC Online SC 352**. In particular, he relies on paragraphs 19 to 23 of the reported decision. The observations and discussions in those paragraphs pertain to the manner in which Section 37 of the NDPS Act should be construed. What has been held in effect that it should be construed in a reasonable manner and not in a way so as to make it impossible to grant bail to an accused in any case. With respect, the said decision has no manner of application in the instant case. We are not denying bail on the ground of Section 37 of the NDPS Act alone.

6. The petitioner also relies on a decision of the Hon'ble Apex Court in the case of **Sheikh Javed Iqbal @ Ashraq Ansari @ Javed Ansari-vs.-State of Uttar Pradesh** reported at **2024 SCC Online 1755**. In particular, reliance has been placed on paragraphs 23, 23.1 and 32 of the reported decision. In paragraph 23, the Hon'ble Apex Court refers to its decision in *Javed Gulam Nabi Shaikh-vs.-State of Maharashtra*, wherein the accused person was granted bail since he had been in custody for more than 4 years and charge had yet not been framed. Factually, that case is completely different from the present case. Further, the observations in paragraph 32 pertain to the fundamental right of an accused/under-trial under Article 21 of the Constitution. However, we are of the view that the fundamental rights of the petitioner in the present case have not been infringed to such an extent that notwithstanding the *prima facie* incriminating material against him and seizure of huge quantity of ganja amounting to 215 kgs, we should grant bail to

him. If convicted, the petitioner may have to suffer imprisonment for upto 20 years and at least 10 years.

7. For the reasons aforestated, we reject the petitioner's prayer for bail.

8. CRM (NDPS) 1460 of 2024 is, thus, dismissed.

9. However, since the petitioner has been in incarceration for quite a long time, we direct the learned Trial Court to expedite the trial to the fullest extent and conclude the same at an early date but definitely within four months from the date of communication of this order by the parties to the learned Trial Court. If necessary, frequent schedules of 2/3 dates will be fixed by the learned Trial Court and no unnecessary adjournments will be granted to either of the parties and if necessary the next date fixed be also preponed.

10. 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.)