

03. 19.11.2024
Court
No.29 (Tanmoy)

Allowed

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (NDPS) 1462 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 / Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, arising out of **NCB Crime No. 77/2021** under Section **8(C)** read with Sections **20(b)(ii)(C)/29** of the NDPS Act, 1985.

And

In the matter of: - **James Nayak**

...petitioner.

Mr. Shataroop Purkayastha
Ms. Jagriti Bhattacharya

...for the petitioner.

Mr. Kallol Mondal
Mr. Somnath Adhikary

...for UOI/NCB.

Dictated by Arijit Banerjee, J.

1. On October 5, 2024, we had dictated an order in Court rejecting the bail application of the petitioner. We did not sign that order since after dictating the order, certain decisions of the Hon'ble Supreme Court came to our notice which prompted us to reconsider the bail application. The order October 5, 2024, that we had dictated, reads as follows:-

“10.
05-10-2024
(ct. no.28)
debajyoti
(rejected)

CRM (NDPS) 1462 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure/483 of the Bhartiya Nagarik Suraksha Sanhita in connection with NCB Crime No.77 of 2021 under Section 8(C) read with Sections 20(b)(ii)(C)/29 of the Narcotic Drugs and Psychotropic Substances Act.

- A n d -

In the matter of : James Nayak

.... Petitioner.

*Mr. Shatarup Purkayastha,
Mr. Jagriti Bhattacharya*

... For the Petitioner.

Mr. Kallol Mondal

... For NCB.

Dictated by Arijit Banerjee, J.

The petitioner renews his prayer for bail which was rejected earlier on July 05, 2023 and April 12, 2024. In fact, while rejecting the petitioner's prayer on April 12, 2024, a coordinate Bench observed, inter alia, as follows:

" On the score of delay, it is contended petitioner is in custody for about two years and six months. There is no likelihood of trial concluding in the near future.

Learned Advocate for the NCB submits trial was stalled as one of the co-accused had moved an application for quashing being CRR 884 of 2023. However, proceedings have not been stayed in the said matter.

We note that the accused persons have not regularly appeared before the trial Court. They had approached this Court for quashing. Delay in the matter is not wholly attributable to the prosecution.

Under such circumstances, we are not inclined to grant bail to the petitioner on the score of delay in trial."

The petitioner says that he is now in custody for almost three years. The trial has not begun. Even charge has not been framed.

Learned counsel for Narcotic Control Bureau says that some of the accused persons are absconding. One of the accused persons moved a revisional application before this Court and there is an order in that application not to take coercive steps against that petitioner.

There is no stay of proceedings in the aforesaid revisional application or otherwise. The prosecution should have prayed before the learned trial Court for splitting up the trial and proceeding against the accused persons who are in custody. The prosecution has not done so.

However, in view of the huge quantity of Ganja having been seized from the accused persons including this petitioner, we are not inclined to enlarge this petitioner on bail immediately.

The application for bail being CRM (NDPS) 1462 of 2024 is, thus, dismissed.

However, we direct the learned trial Court to split up the trial in accordance with law and proceed with the trial against the accused persons who are in custody so that the entire process is completed by delivery of judgment within one year from the date of communication of this order.

Registry of this Court and the parties shall communicate this order to the learned trial Court forthwith.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)”

2. The bail application has been listed again at our instance. The relevant facts are already recorded in the order dated October 5, 2024, quoted above.
3. In view of the fact that the petitioner is in custody now for more than three years and one month and even charge has not been framed and noting that there are eight charge-sheet named witnesses which would indicate that an early conclusion of the trial is highly unlikely, we recall the order dated October 5, 2024 and allow the bail application solely on the touchstone of Article 21 of the Constitution of India due to delay in progress of the trial. We make it clear that we have not touched the merits of the case.
4. Accordingly, we direct that the petitioner, namely, **James Nayak** shall be released on bail upon furnishing a bond of Rs.25,000/- (Rupees Twenty Five Thousand), 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 Sessions Judge, 3rd Court, Howrah, subject to condition that the petitioner shall appear before the Trial Court on each and every date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973 / Section 355 of Bharatiya Nagarik Suraksha Sanhita, 2023, and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and on further condition that the petitioner, while on bail, shall not leave the territorial jurisdiction of Howrah Police Station and shall furnish his present

address, where he will be residing, to Narcotics Control Bureau (NCB), represented by Krishna Kumar Gupta, Intelligence Officer, Kolkata Zonal Unit, Rajarhat, Newtown, Kolkata-700160, as also to the Inspector-in-Charge of the Howrah Police Station, and shall also report to such Inspector-in-Charge of the Howrah Police Station, once in a week, until further orders.

5. In the event the petitioner fails to adhere to any of the conditions stipulated above 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 being CRM (NDPS) 1462 of 2024 is accordingly disposed of.
7. Criminal Section is directed to make available urgent photostat certified copies of this order to the parties, if applied for, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)