

18.10.2024
Sl. No.2
PP/BM

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

C.R.M.(NDPS) 1674 of 2024

In Re: An application for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023(corresponding to Section 439 of the Code of Criminal Procedure) in connection with NDPS Case No.37 of 2022 arising out of Special Task Force(STF) Police Station Case No.29 of 2022 dated 15.09.2022 under section 21(c)/29 of the Narcotic Drugs and Psychotropic Substances (in short, NDPS) Act.

And

In the Matter of : Rabi Roy @ Pocha

.... petitioner.

Mr. Sudip Deb
Mr. Joy Chakraborty
Mr. Sandip Dinda
Ms. Ipsita Ghosh

.....For the petitioner.

Mr. Debasish Roy, Ld. P.P
Mr. Nirupam Dhali

.....For the State.

1. This is the second bail application made by the petitioner praying for being enlarged on bail.
2. The petitioner was apprehended with commercial quantity of contraband on 15th September, 2022. The petitioner says that there is dispute as to the place of arrest of the petitioner.
3. The petitioner also says that the provision of Section 41B of the Code of Criminal Procedure, 1973 has been violated in the instant case. The petitioner had urged these two

points before this Court in his earlier bail petition, but the Court did not accept the same for the purpose of enlarging the petitioner on bail.

4. In this application the petitioner has emphasized on the provisions of Article 21 of the Constitution of India on the ground that the petitioner is languishing in custody for about two years when the trial is continuing but at a delayed pace.
5. The petitioner relies upon a judgment reported in 2024 SCC Online SC 1693 (Javed Gulam Nabi Shaikh vs. State of Maharashtra & Anr.) to contend that in case of delayed trial in a case arising out of NDPS Act, bail can be granted under the provisions of Article 21 of the Constitution of India irrespective of the provision of Section 37 of the NDPS Act.
6. On the issue of delay there are contradictory versions. The petitioner says that at least four adjournments were sought for by the prosecution while on behalf of prosecution it is submitted that the petitioner has taken adjournment for cross-examination.
7. After hearing the parties and considering the materials on record, we do not find any substantial ground for granting bail to the petitioner.
8. The small compass on which the petitioner has attacked the action of the State for granting bail on merit does not persuade us to allow the petitioner's prayer for bail as

those are required to be gone into at the trial, even if the petitioner is able to establish violation of the provisions of section 41B of the Code of Criminal Procedure then also the petitioner is entitled to other relief(s), that cannot be a parameter at this stage to grant bail.

9. The Charge has been framed and witnesses have been examined between the occurrence of the incident on 15th September, 2022 and 2024. It, therefore, cannot be said that there has been inordinate delay in judicial adjudication while the petitioner is in custody. Moreover, the case of delay, if any, in conducting the trial cannot be fixed on a particular party at this stage.
10. The facts of the case in the judgment in **Javed Gulam Nabi Shaikh** (supra) are different from those of the instant case, particularly in respect of filing of charge sheet, framing of charges and initiation of trial. Although there is no quarrel as to the ratio laid down by the Hon'ble Supreme Court in **Javed Gulam Nabi Shaikh** (supra) but the ratio is inapplicable due to factual distinction.
11. Considering the facts of the case, we request the trial court to expedite the trial. The trial should be concluded by 30th October, 2024.
12. The bail application being CRM (NDPS) 1674 of 2024 is thus rejected.

(Supratim Bhattacharya, J.) (Arindam Mukherjee, J.)