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C.R.M. (NDPS) No. 2083 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Berhampore Police Station Case No. 1258 of 2021 dated 29.10.2021 under Sections 22(c)/29 of the N.D.P.S. Act read with Section 27A of the Drugs and Cosmetics Act.

In Re : Milon Sk. And
..... petitioner

Mr. Tapodip Gupta
.....for the petitioner

Mr. Suman Defor the State

1. Learned Counsel for the petitioner submits he is in custody for more than two years. It is also submitted there is delay in trial. He renews his bail prayer.

2. Learned Counsel for the State opposes the prayer for bail.

3. We have considered the materials on record. Allegations involve recovery of 5000 bottles of Phensedyl Syrup containing Codeine Phosphate above commercial quantity. As narcotics recovered is above commercial quantity prayer for bail on merits would attract restrictions under Section 37 of the NDPS Act. Bail prayer was rejected earlier in January, 2023 on merits. However, it is contended there is no progress in the matter since then. Having gone through the ordersheets annexed to the petition we note though two schedules were fixed but no witness had turned down. This shows indifference

on the part of the prosecution to proceed with the trial expeditiously. Under such circumstances, we are constrained to observe fundamental right to speedy trial of the petitioner has been infringed and he is entitled to bail on this score. Bail prayer on the ground of inordinate delay in trial is not fettered by restrictions under Section 37 of the NDPS Act. Hence, we are inclined to grant bail to the petitioner.

4. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- 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 District Judge, 5th Court at Berhampore, Murshidabad, subject to condition that petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

5. In the event petitioner fails to appear before the trial court 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 is, accordingly, allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

