

12.03.2024
Court No.1
Item. 09
(Suvendu)

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with Jalpaiguri Police Station Case No. 119/2023 dated 14.02.2023 under Sections 20(b)(ii)(c)/23(c) of the NDPS Act corresponding to NDPS No. 14 of 2023 before the learned Additional Sessions Judge 1st Court, Jalpaiguri.

In the matter of: Tarkeshwar Nath @ Aditya Nath Sharma
.Petitioner.

For the Petitioner.

For the State.

1. The prosecution was given a chance to explain the statement made to a coordinate Bench which was disproved by the subsequent events as placed before us.
2. To clarify matters, the petitioner's bail was rejected by a coordinate Bench on 16th November, 2023 on the sole ground of the observations made in the order. The observations are quoted below.

“The trial is under progress. The prosecution proposes to examine twelve (12) witnesses. The next date for recording the evidence of the prosecution witness is fixed on December 16, 2023.

.....

.....

We are of the view that, the trial is under progress and that evidence of the prosecution is being recorded. There is every likelihood of the prosecution witnesses being influenced if the petitioner is enlarged on bail at the crucial stage of the trial."
(We have underlined for emphasize)

3. The facts that have transpired subsequently and that too on our prodding, is that although 16th December, 2023 was fixed for production and supply of copy, nothing happened on that date. 2nd January and 5th February, 2024 were fixed thereafter. There was no progress on those two dates as well. The next date is now fixed on 17th April, 2024. This is also the submission of learned counsel appearing for the prosecution.
4. What transpires from the above is that a completely wrong statement was made to the Coordinate Bench on behalf of the prosecution on 16th November, 2023 which led the Coordinate Bench to deny the prayer for bail. The order does not reflect any other reason for denial of the prayer for bail save and except that the trial is under progress and the trial is at a crucial stage (refer to the quotation above).
5. We are of the view that the conduct of the prosecution is sufficient for us to allow the prayer for bail and to hold that there has been rebuttal of the statutory restriction under Section 37 of the NDPS Act.
6. The prosecution has also not been able to show any progress in the trial from the date of submission of charge-sheet on 10th August, 2023. Charges are yet to be framed.
7. There are several decisions of the Supreme Court which hold that the rights of an accused under Article 21 of the Constitution of India cannot be compromised by reason of the inaction or failure of the prosecution to carrying out their duties in a time-bound matter.
8. The prayer for bail is hence allowed.
9. We accordingly direct that the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand only) with two sureties of like amount each, one of who must be local, to the satisfaction of the learned Additional Sessions Judge, 1st Court,

Jalpaiguri. The petitioner shall not induce witnesses or influence them or tamper with the evidence. The petitioner shall also make himself available for the trial as and when the petitioner is required and shall also not leave the jurisdiction of the concerned police station without leave of the concerned authorities.

10. CRM(NDPS) 51 of 2024 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)