

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

14.03.2024
Court No.1
Item. 19
(Suvendu)

CRM(NDPS) 73 OF 2024

In Re: An application for Bail under Section 439 of the Code of Criminal Procedure, 1973 filed in connection with NDPS Case No. 18/2022 arising out of Kalimpong Police Station Case No. 246 of 2022 dated 05.09.2022 under Sections 22(c) of the NDPS Act, 1985 and subsequently charge-sheet has been submitted vide Charge Sheet No. 403 of 2022 dated 03.12.2022 for alleged offence under Section 22(c) of the NDPS Act, 1985 pending before the learned Judge Special Court (NDPS) Kalingpong.

And

In the matter of: Pranesh Tamang

.Petitioner.

Mr. Sourav Ganguly
Ms. Rishita Chakraborty
Ms. T. Kumai

For the Petitioner.

Mr. Nilay Chakraborty
Mr. Aniruddha Biswas

For the State.

1. The charges were framed against the petitioner on 3rd December, 2022 and there are 14 witnesses who are to be examined.
2. Learned counsel appearing for the petitioner produces a series of orders passed by the learned Special Court (NDPS), Kalimpong from 23rd December, 2022 –15th February, 2024. The bunch contains about 11 orders which show that within the time span from December 2022 – February, 2024 only one witness has been examined thus far. The orders further show that save and except one date namely 20th May, 2023, when the defense prayed for time on account of the accused person not being available due to treatment of his mother, the prosecution failed to proceed with the trial on all other dates. The most recurring reason is of the prosecution witnesses not being present and the concerned police officer/ SI being unable to attend the Court

proceedings. The last order of 15th February, 2024 records the same that is the prosecution filing a petition for summoning PW 1 for further examination and the next date being fixed on 15th and 16th April, 2024 for the evidence of PW 1 and CSW 1 and 3 respectively.

3. The prosecution does not have any explanation for its tardy conduct or the delay of one year ten months in proceeding with the trial.
4. We are aware of the several Supreme Court decisions which have frowned upon similar conduct of the prosecution with regard to long incarceration.
5. The order passed by the Supreme Court in *Rabi Prakash Vs. State of Odisha, 2023 SCC Online, SC 1109* has been placed before us. In the said decision the Supreme Court also raised its concern about violation of the right guaranteed under Article 21 of the Constitution of India.
6. We are hence of the view that the petitioner has been able to rebut the statutory restrictions of Section 37 of the NDPS Act.
7. The prayer for bail is hence allowed.
8. 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 Judge Special Court (NDPS) Kalimpong. 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.
9. CRM(NDPS) 73 of 2024 is accordingly allowed and disposed of in terms of the above.

(PRASENJIT BISWAS, J.)

(MOUSHUMI BHATTACHARYA, J.)

