

22.04.2024
Court No.01
Item No. 13
Allowed

KC

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

CRM (NDPS) 96 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with CR (NDPS) Case No.- 34 of 2022 rising out of Matigara Police Station Case No. 381 of 2022 dated 28/03/2022 under Section 21(c) of the NDPS Act.

And

In Re: **Md. Based @ Md. Based Ali**

Petitioner

Mr. Somraj Paul

For the Petitioner

Mr. Abhijit Sarkar
Mr. Tapan Bhattacharjee

For the State

We have considered the learned counsel for the parties.

This is a third application for bail.

Undisputedly, the statement made on behalf of the prosecution in the earlier occasion in CRM (NDPS) 562 of 2023 was incorrect as it appears from the certified copy of the order disclosed in the proceeding that the evidence of P.W. 1 was in progress and accordingly, the statement made on behalf of the prosecution that out of 14 witnesses only four witnesses have examined. On the basis of the statement of the Coordinate Bench, the application for bail was rejected and the Coordinate Bench directed the learned Special Judge (under NDPS) Act, Siliguri to make an earnest effort to expedite the trial of the case and try to conclude the same within six months from date. However, admittedly no substantial progress has been made in the trial and because of the delayed progress in the trial and

having regard to the fact that possibility of trial being concluded in near future appears to be bleak, we are inclined to grant bail to the petitioner.

From the materials placed before this Court, we are convinced that the present accused petitioner is not responsible for the delay in conducting the trial and in view of such, we are of the considered view that present accused person has successfully made out a case for enlargement on bail. The prayer for bail on the ground of inordinate delay in trial is not fettered by restrictions under Section 37 of the NDPS Act. Reference in this regard may be made to **Rabi Prakash vs. The State of Odisha, 2023 SCC Online SC 1109.**

In the facts and circumstances of the present case, the present accused/petitioner viz. Md. Based @ Md. Based Ali 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 Special Judge, N.D.P.S. Act, 2nd Court, Siliguri subject to condition that he 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 or commit similar offences in future.

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.

This application for bail is, thus, disposed of.

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

(Soumen Sen, J)

(Partha Sarathi Sen, J)