

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

**03.04.2024
Court No.01
Item No.11
Avijit Mitra**

CRM (NDPS) 104 of 2024

In Re:- An application for bail under section 439 of the
Code of Criminal Procedure;
And

In Re: Netai Das

...Petitioner.

Mr. Hillol Saha Poddar,
Ms. Mousumi Das
.... for the petitioner
Mr. Aditi Shanakr Chakraborty, Ld. A.P.P.,
Mr. Biswarup Roy
...for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Naxalbari Police Station Case No.233 of 2021 dated 30.10.2021 under Sections 21(c)/22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. Saha Poddar, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody for more than 2 years 6 months and there is no possibility towards conclusion of the trial in the near future.

He argues that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed under Article 21 of the Constitution and in the said conspectus, further detention of the petitioner is not

warranted and he may be enlarged on bail on any stringent condition.

Mr. Roy, learned advocate appearing for the State denies and disputes the contention of the petitioner and submits that the contraband substance above commercial quantity was recovered from the exclusive possession of the petitioner and as such rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act are clearly attracted. The delay, as alleged, is not totally attributable to the State and in view thereof, the petitioner's prayer for bail needs to be refused, at this stage.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears from the last order passed by the learned trial Court on 18th January, 2024 that not even a single chargesheet witness has been examined till date. As on the earlier dates fixed, the concerned witness did not appear, the learned Court was constrained to issueailable warrant of arrest against the CSW no. 1 and the next date has been fixed on 23rd April, 2024 for production and evidence of CSW no. 1. From the said sequence of fact it is clear that the petitioner cannot be held responsible for the delay which has occurred.

The exposition of Article 21 in the case of *Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna*, reported in (1980) 1 SCC 81 was exhaustively considered

afresh in the case of *Abdul Rehman Antulay and Ors. Vs. R. S. Nayak and Anr.*, reported in (1992) 1 SCC 225 and it was *inter alia* observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice. More the rigour, the quicker the adjudication ought to be. Whatever may be the nature of the offence, a prolonged trial against an accused would be violative of Article 21.

Applying such proposition of law to the facts of the present case, we are of the opinion that further detention of the petitioner is not necessary.

Accordingly, we 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 whom must be local, to the satisfaction of the learned Judge, Special Court (under Narcotic Drugs and Psychotropic Substances Act, 1985), Siliguri with a further condition that he shall meet with the Officer-in-Charge, Bhaktinagar Police Station once a fortnight till conclusion of the trial. He shall also attend the learned trial Court on all the dates as fixed for hearing.

It is further directed that the petitioner shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without justifiable cause, the learned Court below shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

With the above observations and direction, the application for bail, being CRM (NDPS) 104 of 2024, is disposed of.

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

(Biswaroop Chowdhury, J.) (Tapabrata Chakraborty, J.)