

25.04.2024
SL No.54
Court No.1
(gc)
(allowed)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (NDPS) 148 of 2024

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Bhaktinagar Police Station Case No.180 of 2021 dated 20.02.2021 under Section 20(b)(ii)(c) of the NDPS Act, 1985.

And

In the matter of : **Pinku Paswan**

- Petitioner.

Mr. Jaydeep Kanta Bhowmik,
Mr. Sayantan Bhowmik,
Mr. Shubham Kumar,
Ms. Rikta Sarkar,
Ms. Sayantani Das

....For the Petitioner.

Mr. Ujjwal Luksom,
Mr. Aniruddha Biswas

...For the State.

1. In support of the application for bail, the learned Counsel for the petitioner at the very outset draws the attention of this Court to the order dated 24.01.2024 as passed in CRM (NDPS) 11 of 2024 by a Coordinate Bench in which one of us (*Partha Sarathi Sen, J.*) is the member. It is submitted by production of the server copy of the orders dated 08.12.2023 and 15.03.2024 of the trial court that though the charges have been framed as against the present accused petitioner but not a single witness has been examined as yet while the present petitioner is languishing in J.C. for over 1000 days.

2. While opposing the prayer for bail, Mr. Biswas, learned Counsel appearing for the State submits before this Court that huge commercial quantity of contraband articles were seized from the possession of the present petitioner. Mr. Biswas has also submitted that a similar prayer for bail was rejected earlier in respect of another co-accused.
3. It appears to us that investigation has been completed and charge-sheet was submitted on 17.11.2021 and the supplementary charge-sheet was submitted on 10.01.2022. It, thus, appears to this Court that the delay in conducting the trial is not attributable to the accused and on account of such delay the present accused petitioner is successful in establishing his right for a speedy trial in view of the infringement of Article 21 of the Constitution of India. A prayer for bail on the ground of violation of Article 21 of the Constitution of India is not fettered by the restriction imposed under Section 37 of the NDPS Act as held by the Hon'ble Supreme Court in ***Rabi Prakash Vs. The State of Odisha*** reported in **2023 LiveLaw (SC) 533: 2023 SCC Online 1109**.
4. In spite of repeated queries, we could not find any plausible explanation for non-production of witness or praying for expeditious trial of the pending NDPS matter before the learned Trial Court as we find from the record that the supplementary charge-sheet was submitted on

10.01.2022 and there has been no attempt on the part of the prosecution to produce the witness on the date fixed.

5. It is an admitted position that as on date not a single witness has been examined. The learned Counsel for the State has submitted that there are 19 witnesses. The possibility of a speedy trial and conclusion of the trial in near future appears to be bleak and remote.
6. Under such circumstances, the prayer for bail is allowed.
7. Accordingly, the petitioner, namely, **Pinku Paswan**, shall be released on bail upon furnishing a bond of Rs.10,000/- with two registered sureties of like amount each, to the satisfaction of the learned Additional Sessions Judge, 1st Court, Jalpaiguri under NDPS Case No.09 of 2021 with a condition that the present accused petitioner shall appear before the learned Trial Court on each and every date of substantive hearing subject to the provision of Section 317 of the Cr.P.C. and shall not leave the district Jalpaiguri unless permitted by the Trial Court.
8. Accordingly, the application for bail is disposed of.
9. 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.)

