

JPD-71
Ct No.01
01.08.2024
S.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (NDPS) 383 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure Code, 1973 in connection with Alipurduar Police Station Case No.120 of 2021 dated 22.04.2021 under Sections 20(B)(ii)(c)/25/28/29 of the NDPS Act, 1985.

And

In the matter of: Vijay Ganesh Dabhade @ Bijay Ganesh Dabhade

...Petitioner

Mr. Joydeep Kanta Bhowmik
Mr. Sayantan Bhowmik
Mr. Shubham Kumar
Ms. Sayantani Das

...for the petitioner

Mr. Kallol Acharjee
Mr. Sagnik Sankar Sikdar

... for the State

1. Learned counsel for the petitioner contends that the petitioner is in custody for 1197 days. The FSL report was furnished after thirteen long months subsequent to the samples being sent to the laboratory, which is in gross contravention of Rule 14 of the NDPS Rules, 2022.
2. Till date, trial has not been commenced. Learned counsel for the petitioner cites *Rabi Prakash versus The State of Odisha*

wherein the Supreme Court observed that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

3. Learned counsel for the State opposes the prayer for bail and contends that the next date has been fixed in the trial court on August 19, 2024 for examination of CW-1. Learned counsel for the State also points out that only recently, on July 3, 2024, a co-ordinate Bench had refused similar prayer of the petitioner.
4. Upon a careful consideration of the order dated July 3, 2024, we find that the same was passed primarily relying on a still previous rejection of bail prayer of the petitioner dated August 1, 2023, that is, one year earlier, requesting the trial court to make endeavour to conclude the trial within a period of one year from date.
5. However, mere direction on the trial court does not always evoke confidence of the court while considering an application for bail, particularly in line with the proposition as laid down in *Ravi Prakash (supra)*. The petitioner is already in custody for a prolonged period of 1197 days and we do not see anything in the horizon to indicate that the trial will soon be concluded.

6. Even after thirteen months of the sample being sent, the FSL report is not with the prosecution. Thus, it defies logic as to how the trial shall be commenced and concluded soon. Hence, relying on the principle of *Ravi Prakash (supra)*, we are inclined to grant bail to the petitioner.
7. Accordingly, CRM (NDPS) 383 of 2024 is allowed, thereby granting bail to the petitioner on condition that the petitioner shall furnish bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, First Court and Special Court (NDPS Act) at Jalpaiguri.
8. The petitioner shall not leave the territorial jurisdiction of the trial court during the entire period of trial and shall attend each and every date of trial.
9. Further, the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts and circumstances of the case so as to dissuade such person from disclosing such facts to any police officer or the court and/or tamper with the evidence in any manner whatsoever.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)