

13.08.2024.

Item No. 4
Court No.1
ap

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE*

C.R.M. (NDPS) No. 386 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 24.07.2024 in connection with Bagdogra Police Station Case No. 92 of 2023 dated 28.02.2023 under Section 21(c) of the NDPS Act, 1985.

And

In the matter of: **Biswajit Barman.** ...petitioner.

Mr. Jaydeep Kanta Bhowmik,
Mr. Sayantan Bhowmik,
Mr. Shubham Kumar,
Ms. Sayantani Das. ...For the petitioner

Mr. Nilay Chakraborty, ld. APP,
Mr. Aniruddha Biswas.For the State

1. In terms of the order dated 2nd August, 2024 passed by a Co-ordinate Bench of this Court, the Investigating Officer of the case is personally present before this Court.
2. His personal appearance is dispensed with.
3. We have gone through the case diary.
4. Counsel for the petitioner submits that his client is in custody since 28th February, 2023. He further submits that charge-sheet has been filed in August, 2023. He also submits that the prosecution has not examined a single witness till date. He relies upon a decision of the Himachal Pradesh High Court in the case of Deep Raj @ Neetu – Vs. – State of Himachal Pradesh reported in 2023 1 Crimes (HC) 26.

5. In the aforesaid decision by reference to several judgments of the Hon'ble Supreme Court of India, the Himachal Pradesh High Court has held that the prolonged period of incarceration without examination of the first witness of the prosecution, defeats the objects and purpose of Section 37 of the NDPS Act, 1985.

6. This Court is in agreement with the view expressed by the Counsel for the petitioner since the liberty of a person under Article 21 of the Constitution of India, gets compromised by prolonged incarceration without any prosecution witness even being examined. The argument that the trial must be deemed to have commenced with the framing of charges, is not relevant in the facts of the case.

7. However, having regard to the facts that commercial quantity of Heroin has been seized from possession of the petitioner, this Court directs examination of all the 13 prosecution witnesses to be completed as expeditiously as possible, preferably within a period of eight months from date. In default, the petitioner shall be entitled to press for bail.

8. It is submitted that the examination of PW-1 is fixed on 5th November, 2024 by the Court below. It is directed that the Trial Judge shall prepone the date to any date within this month.

9. The parties shall not seek any undue adjournments in the Court below.

10. With the aforesaid observations, C.R.M. (NDPS) No. 386 of 2024 is, thus, disposed of.

11. Registry of this Court shall communicate this order to the concerned Trial Judge forthwith.

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

(Ajay Kumar Gupta, J.)

(Rajasekhar Mantha, J.)