

26.11.2024
Ct. No. 01
SL No. 12
Cp

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

CRM (NDPS) No. 498 of 2024

In Re: - An application for bail under Section 483 of the B.N.S.S. 2023 in connection with Bhaktinagar Police Station Case No. 1052 of 2023 dated 27.11.2023 under Sections 21(c)/22(c)/25/29 of the NDPS Act, 1985.

And

In the matter of: Padya Singha @ Bikram

Ms. Mousumi Das

... for the petitioner

Mr. Saikat Chatterjee

Mr. Dhiman Sil

...for the State

1. Leave is granted to correct the cause title.
2. The learned advocate for the petitioner refers to an order passed by a Coordinate Bench in CRM (NDPS) 278 of 2024 dated July 25, 2024 and submits that the co-accused who stood on the same footing has been enlarged on bail. He submits that the same benefit can also be extended to the present petitioner. The petitioner is in custody for over 360 days.
3. Learned advocate for the State produces the C.D. and vehemently opposes the prayer for bail. He submits that the rigours of Section 37 of the NDPS Act can only be diluted for the violation of the provisions of Sections 42, 43 and other relevant provisions of the Act. He submits that grant of bail to one accused person by another bench cannot be said to be sufficient to override the statutory embargo in Section 37 of the NDPS Act. He also submits that the present petitioner did not deserve to be released on bail.

4. Heard the learned advocates of the respective parties and perused the materials on record, including the C.D. The Coordinate Bench while granting bail to the co-accused observed that although charge-sheet was filed on February 29, 2024, nothing had progressed. Even charges have not been framed. We are informed that till date the charges have not been framed and there are 15 witnesses cited in the charge-sheet. There is hardly any chance for the trial to conclude expeditiously.
5. In the judgment of Rabi Prakash vs. State of Odisha, reported in 2023 SCC Online SC 1109, it has been specifically ruled that prolonged incarceration without any likelihood of conclusion of trial in the near future can militate against the statutory embargo engrafted under Section 37 of the NDPS Act. The petitioner's right to liberty and speedy trial are guaranteed under Article 21 of the Constitution of India. The relevant paragraphs of the said judgment in Rabi Prakash (supra) are quoted below:-

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The 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.”

6. Learned advocate for the State could not point out any material on which we can apply a different yardstick to the present petitioner. Considering such aspect and taking note of the fact that the co-accused who stands in the same footing has been enlarged on bail and that there is no possibility of conclusion of trial in the near future, we are inclined to extend the same benefit to the present petitioner.
7. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.25,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Judge, Special Court under NDPS Act, Jalpaiguri, subject to the condition that the petitioner shall appear before the learned Trial Court on each and every date of hearing until further order and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future. The petitioner will not leave the jurisdiction of the trial court.
8. In the event the petitioner fails to comply with the conditions as stated hereinabove, the trial court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.
9. The application for bail is, thus, allowed and disposed of.

(Partha Sarathi Chatterjee, J.)

(Shampa Sarkar, J.)