

02.12..2024
Ct. No. 01
SL No. 41
Cp
(allowed)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

CRM (NDPS) No. 554 of 2024

In Re: - An application for bail under Section 483 of the B.N.S.S. 2023 in connection with C.R. (NDPS) Case No.35 of 2024 arising out of Siliguri Police Station Case No. 430 of 2024 dated 06.05.2024, under Sections 21(c)/22(c)/25/29 of the NDPS Act, 1985.

And

In the matter of: Dipak Chandra Barman & Anr.

.....petitioners.

Mr. Sourav Ganguly
Mr. Gopal Roy
Ms. Rishita Chakraborty

... for the petitioners

Ms. Namrata Das

...for the State

1. The learned advocate for the petitioners submits that there was a contravention of the mandate of provisions of Section 42(2) of the NDPS Act, at the time of alleged seizure of the contraband articles. He places reliance upon a judgment in the matter of ***Boota Singh and Others versus State of Haryana*** reported in ***(2021) 19 SCC 606*** and submits that such contravention is enough to vitiate the entire trial. Apart from that, he also takes the plea that the present petitioners are in custody for a period of 210 days and charge has not yet been framed. Moreover, 24 persons have been cited as witnesses and there is no likelihood of early conclusion of the trial.
2. Learned advocate for the State produces the case diary and vehemently opposes the prayer for bail. She submits that contravention of the provision of Section 42(2) of the NDPS Act, can be agitated at the time

of trial and such point cannot be raised at the time of pressing the application for bail.

3. Heard the learned advocates. Perused other materials on record including the case diary. From the charge-sheet, it is evident that 24 persons have been cited as witnesses. The charge-sheet was submitted on September 30, 2024, but charges have not yet been framed. There is hardly any progress since the filing of the charge-sheet. We are of the opinion that there is no possibility of conclusion of the trial in the near future.
4. Under such circumstances, we are inclined to grant bail on the ground that prolonged incarceration of the petitioners militates against the provisions of Section 37 of the NDPS Act. The petitioners 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 the learned Judge, 2nd Special Court, (NDPS Act) at Siliguri. The petitioners shall appear before the learned trial court on each and every date of hearing and shall not intimidate the witnesses or tamper with any evidence. The petitioners shall not leave the jurisdiction of the trial court.
5. In case of failure to comply with the above directions, the learned trial Judge shall be entitled to cancel the bail without further reference to this Court.
6. The application for bail, is, thus, disposed of.
7. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.)

(Shampa Sarkar, J.)