

23.
03-06-2025
(ct. no.06)
pp/BM
(Allowed)

CRM (NDPS) 641 of 2025

In re: An application for bail under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 in connection with N. Case No.12 of 2023 arising out of Excise SI Seizure list No.1/2023-2024 dated 17.07.2023 under Sections 8(c)/20(b)/29 of the NDPS Act.

- A n d -

In the matter of : Bappi Bairagi @ Bapi Bairagi

.... Petitioner.

Mr. Subhajit Chowdhury

Mr. A. K. Bhadra

... For the Petitioner.

Mr. Aniket Mitra,

Mr. Sobhan Gani

... For the State.

1. Report filed by the State be taken on record.
2. It is said by the learned advocate for the petitioner that this accused petitioner is in custody since 17.07.2023. The charge was framed by the trial court on 06.08.2024 and thereafter there was no progress of the trial as the witnesses did not turn up.
3. It is further said that this accused petitioner is in custody for a considerable period of time without providing him speedy trial as enshrined in the Constitution of India. No plausible explanation is given on the side of the prosecution as to why the prosecution witnesses did not turn up after framing of the charge by the trial court on 06.01.2024.
4. Reliance has been placed by the learned advocate for the petitioner on the decision rendered by the Hon'ble Apex Court

in **Javed Gulam Nabi Shaikh vs. State of Maharashtra & Anr.** reported in **2024 SCC Online SC 1693**. So, it is prayed that this accused petitioner may be enlarged on bail on the touchstone of Article 21 of the Constitution of India.

5. Learned advocate for the State raises vehement objection by submitting that the offence involved in this case is serious in nature and the accused should not be granted bail as the mandate provided under Section 37(1) (b) of the NDPS Act has not been found to be satisfied.

6. It is further said that huge quantity of contraband article was recovered from the possession of the accused petitioner and as such the petition praying for bail filed by the petitioner may not be entertained.

7. I have considered the rival submissions advanced by both the parties and have perused judgment rendered by the Hon'ble Apex Court in Javed Gulam Nabi Shaikh (supra). The case was started on 17th July, 2023 and after completion of investigation charge sheet was submitted by the prosecuting agency on 29th December, 2023. Thereafter charge was framed by the trial court on 6th August, 2024 and subsequent dates were fixed for taking evidence of the prosecution witnesses but unfortunately after framing of charge the evidence taking process has not been started.

8. It appears from the decision rendered by the Hon'ble Apex Court that prolonged incarceration of the under trial prisoner violates constitutional principle of dignity and liberty. It is said by the Hon'ble Apex Court that the liberty of an accused

who is facing prolonged trial deserve attention of the court. So, prolong incarceration of an under trial prisoner without providing him the speedy trial violates the constitutional principle as enshrined in Article 21 of the Constitution of India.

9. In this case, the accused petitioner is in custody for a considerable period of time and although the charge was framed by the trial court in the year 2024, since then no witnesses have turned up on the side of the prosecution.

10. It is observed by the Hon'ble Apex Court in **Ankur Chaudhary vs. State of Madhya Pradesh reported in 2024 Live Law 412** inter alia that- "it is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and such, conditional liberty overriding the statutory embargo created under Section 37(1) (b) of the NDPS Act, may , in such circumstances, be considered."

11. If prosecuting agency cannot ensure speedy trial, they should not oppose bail citing seriousness of offence. So, without going to the merits of the case and only on the touchstone of the Article 21 of the Constitution of the India, I am inclined to enlarge the accused petitioner on bail.

12. Accordingly, I direct that the accused petitioner, namely, **Bappi Bairagi @ Bapi Bairagi**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be

local, to the satisfaction of learned Special Court, NDPS Act at Barrackpore, with a condition that the petitioner shall not make any threat, promise and induce to any of the charge sheeted witness and he shall make himself available before the trial Court on each and every date of hearing. The petitioner is further directed that he shall not enter the jurisdiction of New Barrackpore P.S except for the purpose of attending the court and for medical exigency and shall provide the address where he would reside if on bail to the investigating agency and the trial court.

13. In the event the petitioner fails to comply with any of the conditions stipulated above, the trial Court shall be at liberty to cancel the bail in accordance with law without further reference to this Court.

14. The application for bail is, thus, **allowed**.

15. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

16. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Prasenjit Biswas, J.)