

09.11.2021
Sdas & PA
4

WWW.LIVELAW.IN

**C.R.M. 3484 of 2021
(via video conference)**

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Madhyamgram Police Station Case No. 233 of 2015 dated 30.04.2015 under Section 20(b)(ii) of the NDPS Act.

And

Allowed

Sanjit Das @ Gosai

..... Petitioner

Vs.

The State of West Bengal

.....Opposite party

Mr. Arnab Chatterjee

..... for the petitioner

Mr. Sudip Ghosh

Mr. Apurba Kumar Datta

..... for the State

Petitioner is in custody for six and half years and it is submitted by the learned Counsel appearing for the petitioner that there is very slow progress in the trial.

Learned Counsel for the State opposes the prayer for bail.

We have considered the materials on record. Statements of the witnesses prima facie disclose involvement of the petitioner in dealing in narcotic substance above commercial quantity. However, there is inordinate delay in disposal of the case. No material placed before us to show that the petitioner had contributed to the delay. We are conscious of the statutory restrictions under Section 37 of the NDPS Act. However, prayer for bail in the present case is made not on merits but on the ground of inordinate delay in disposal of the case which has infringed fundamental right in speedy trial of the petitioner enshrined under Article 21 of the Constitution of India. In **Supreme Court Legal Aid**

WWW.LIVELAW.IN

Committee vs. Union of India¹, Hon'ble Apex Court, inter alia, held that in the event the under-trials have suffered detention for more than five years in relation to the cases involving narcotic substance above commercial quantity, they may be released on bail on an one-time measure. Although said direction may not be treated as a binding precedent under Article 141 of the Constitution of India, we may invoke a principle of parity on facts as the petitioner in the present case is incarcerated for more than six years as an under-trial while facing prosecution in a narcotic case involving commercial quantity.

While interpreting section 43D(5) of Unlawful Activities (Prevention) Act (for short 'UAPA'), the Apex Court in **Union of India Vs. K.A. Najeeb**², held as follows:-

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

The aforesaid report culls out a clear distinction between grant of bail on merits which attracts statutory restrictions as engrafted in section 43D(5) of UAPA or section 37 of the NDPS Act on one hand and bail due to

¹ (1994) 6 SCC 731

² (2021) 3 SCC 713

WWW.LIVELAW.IN

protracted incarceration and inordinate delay infracting Article 21 on the other hand. While in the former the Court considers the bail on merits and its discretion is hedged by the aforesaid statutory restriction, the latter being an invocation of liberty based on breach of Article 21, cannot be denied with reference to such restriction.

Though section 37 of the NDPS Act imposes stringent restriction than section 43D(5) of UAPA in the matter of grant of bail on merits, such restriction, however, must yield to a prayer of liberty in appropriate cases where incarceration of an under-trial constitutes a substantial portion of the maximum sentence and the completion of trial is in the near future is the far cry.

In the light of the aforesaid discussion, we are of the opinion that the petitioner is entitled to bail due to inordinate delay in trial and infraction of fundamental right under Article 21 of the Constitution of India. In this regard we may refer to **Sanar Ali vs. State of West Bengal**³.

Accordingly, the petitioner be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under NDPS Act at Barasat, North 24-Parganas, on condition that the petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further conditions that the petitioner shall remain within the jurisdiction of North 24-Parganas

³ AIR Online 2020 Cal 561

WWW.LIVELAW.IN

except for the purpose of attending trial proceedings and shall report to the concerned officer-in-charge once in a month until further orders.

In the event the petitioner fails to appear before the trial court and does not co-operate with the trial without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application for bail is, thus, allowed.

(Aniruddha Roy, J.)

(Joymalya Bagchi, J.)