

21.12.2020
Item no. 103
Court No.28
AB

C.R.M. No.10591 of 2020

(Via Video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure in connection with Kaliachak Police Station Case No.374 of 2015 Dated 15.07.2015 under Sections 363/365 302 of the Indian Penal Code

And

In the matter of:-

Safikul Biswas & Anr.

... Petitioners

Mr. Sekhar Basu, Sr. Advocate,
Mr. Sagar Saha

.. for the petitioners

Mr. Saibal Bapuli,
Mr. Arani Bhattacharya

..for the State

It is submitted on behalf of the petitioners that they are in custody for 67 days. It is further submitted that the incident occurred in 2015 whereas they were arrested in 2020 after a lapse of five years.

Learned Counsel appearing for the State opposes the prayer for bail and submits, due to outbreak of fire in the police station in 2016 documents had been destroyed. Statements of witnesses were recorded in 2020 implicating the petitioners. Finally, they were arrested.

We have considered the materials on record. Incident occurred in July 2015. No statement under Section 164 Cr.P.C. of the witnesses implicating the petitioners was recorded in the following six months. After five years the said statements have been recorded. Hence, we are not persuaded to believe that the statements have been subsequently recorded under Section 164 Cr.P.C. as the earlier statements of the selfsame witnesses recorded under Section 164 Cr. P.C. had been destroyed.

Furthermore, statements of the witnesses recorded in 2020 do not refer to any earlier contemporaneous statement made by them to police.

Under such circumstances and in view of the period of detention suffered by the petitioners, we are inclined to grant them bail.

Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only) each with two sureties of like amount each, each of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Malda, subject to the condition that they shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioners fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)