

01.03.2021
Item no.08
Court No.28
Avijit Mitra

C.R.M. 409 of 2021 (through video conference)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Netaji Nagar Police Station Case No.48 of 2016 dated 09.02.2016 under Sections 120B/395/397 of the Indian Penal Code and Section 25(b)(a)/27 of the Arms Act;

And

In Re : Hafijul Ali

.... petitioner

Mr. Anirban Mitra,
Mr. Amit Halder

....for the petitioner

Mr. Madhusudan Sur,
Mr. Dipankar Pramanick

..... for the State

Mr. Mitra, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated and is in custody for more than 4 years 11 months. Upon completion of investigation charge sheet has been filed but out of a total of 45 witnesses only 6 witnesses have been examined till date. In view thereof, there is no possibility towards conclusion of the trial in the near future. Personal liberty without ensuring speedy trial would not be in consonance with the exposition in Article 21 of the Constitution of India.

Per contra Mr. Sur, learned advocate appearing for the State submits that from the materials on record it would be explicit that the petitioner is directly involved in the alleged offence. Along with the petitioner there are in total six accused persons and one co-accused person has already expired. On

earlier two occasions, the petitioner's prayer for bail was refused.

He further submits that the delay which has occasioned towards conclusion of trial is not totally attributable to the State. Furthermore, the delay stands intervened by a period lost due to the pandemic.

By our earlier order we directed Mr. Sur to file a report as regards progress of trial. Pursuant thereto, a report has been filed incorporating a list of dates on and from 20th August, 2016 till 4th January, 2021. A perusal of the same reveals that the court could not function on several dates due to resolution of local bar and since the learned presiding officer was transferred. From the report, it also appears that the petitioner's permanent residence is in village Simulia where his wife and son are presently residing.

We have heard the learned advocates and considered the materials in the case diary. From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay which has occasioned. He is languishing in custody for more than 4 years 11 months and since only 6 witnesses out of total 45 witnesses have been examined, there is also no possibility of conclusion of trial in the near future.

In several cases, the Hon'ble Supreme Court has granted bail owing to the long period of incarceration and the unlikelihood of the trial being completed any time in the near future. The exposition of Article 21 in the case of *Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna,*

reported in (1980) 1 SCC 81 was exhaustively considered afresh in the case of *Abdul Rehman Antulay and Ors. Vs. R.S.Nayak and Anr.*, reported in (1992) 1 SCC 225 and it was *inter alia* observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice.

Applying such proposition of law to the facts of the present case, we are of the opinion that further detention of the petitioner, who is in custody for more than 4 years 11 months, is not warranted.

Accordingly, we direct that the petitioner, namely, **Hafijul Ali** 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, one of whom must be local, to the satisfaction of Learned Chief Judicial Magistrate, Alipore, South 24 Parganas.

The petitioner shall not leave the jurisdiction of Madhyamgram Police Station except for attending the trial court on the dates fixed for hearing.

The petitioner shall also meet with the Officer-in-Charge, Madhyamgram Police Station once a week on and from 8th March, 2021 or until further orders.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without justifiable cause, the learned trial court shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

The application for bail being C.R.M. No.409 of 2021 is,
accordingly, disposed of.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)