

01.06.2021
Court No.28
Item No. 08
CP

CRM 1067 of 2021
(via video conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure;

And

In Re : **Asraf @ Arshad @ Arsad**

Petitioner

Mr. Ayan Bhattacharjee
Mr. Anand Keshari

For the Petitioner

Mr. Sudip Ghosh
Mr. A. Kumar
Mr. Bitasok Banerjee

For the State

The present application has been preferred in connection with Howrah Police Station Case No. 395/2018 dated 30.07.2018 under Sections 302/34 of the Indian Penal Code.

Mr. Ayan Bhattacharjee, learned advocate for the petitioner submits that the petitioner has been falsely implicated in an alleged incident which occurred on July 18, 2018. Drawing our attention to the statements of witnesses, as recorded under Section 161 of the Code, he submits that the petitioner's culpability is not explicit therefrom. There are 24 witnesses and only 12 have been examined and, as such, there is no possibility towards early conclusion of the trial. Upon completion of investigation charge sheet has also been filed and as such, further detention of the petitioner, who is in custody since 14th September, 2018, is not warranted in the facts and circumstances of the case. Let the documents, as produced, be kept on record.

Mr. Ghosh, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to several documents in the case diary including the FSL report and submits that the said report clearly shows the petitioner's involvement in the alleged offence. He further submits that trial has already commenced and that the State cannot be held responsible for the delay in conclusion of the trial.

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 since 14th September, 2018 and there is no possibility towards early conclusion of the trial. Article 21 of the Constitution creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice. In the present pandemic situation and rapid proliferation of the virus, bail prayer needs to be considered liberally [See the order passed by the Hon'ble Supreme Court in *Re: Contagion of Covid-19 Virus in prisons* and the judgment delivered in the case of *Shaheen Welfare Association -Vs- Union of India and Others*, reported in (1996) 2 SCC 616].

In view thereof and considering the nature of allegations, the period of detention and the extent of complicity of the petitioner in the alleged offence, we are of the opinion that further detention of the petitioner is not warranted in the facts and circumstances of the case.

Accordingly, we direct that the petitioner, namely, **Asraf @ Arshad @ Arsad**, shall be released on bail upon furnishing a bond

of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Sessions Judge, 5th Court, Howrah.

The petitioner is directed to attend the learned trial court on all the dates specified for hearing.

In the event the petitioner fails to comply with the aforesaid directions, without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

The application for bail, being CRM No. 1067 of 2021 is, accordingly, disposed of.

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

(Shampa Sarkar, J.)

(Tapabrata Chakraborty, J.)