

09.08.2021

CRM 1132 of 2021

Court No.28
Item No. PB - 13
nandy

IBAIL – REJECTED)

In Re:- An application for **Bail** under Section **439** of the Code of Criminal Procedure filed on 28.01.2021 in connection with Kaliachak Police Station Case No. 215 of 2018 dated 03.04.2018 under Sections 341/326/302/120B/34 of the Indian Penal Code read with Sections 25/27 of the Arms Act. (G.R. Case No. 1261 of 2018)

and

In the matter of: **Rubel Ali @ Abdul Aziz**

.....Petitioner

Mr. Milon Mukherjee, Senior Advocate

Mr. Habibur Rahaman, Advocate

.....for the Petitioner

Mr. Sudip Ghosh, Advocate

Mr. Bitosok Banerjee, Advocate

Mr. A.K Dutta, Advocate

.....for the State

The petitioner has filed the instant application for bail in connection with Kaliachak Police Station Case No. 215 of 2018 dated 03.04.2018 under Sections 341/326/302/120B/34 of the Indian Penal Code read with Sections 25/27 of the Arms Act.

This is the fourth application for bail at the behest of the petitioner before this Court. We had an occasion to peruse the order rejecting the earlier few applications filed by the petitioner wherein it has been recorded that there was a disclosure of an involvement of the petitioner in the alleged crime. No doubt such finding is tentative in nature and does not have any swaying effect or persuasive value at the time of trial. Even if the words used in the order which may not be compatible or justifying the role of the petitioner attributed to the alleged commission of an offence, there is no difficulty on the part of the Coordinate Bench at a later point of time to consider on the basis of available materials produce before the Court.

Our attention is drawn to the statement of the so-called

eyewitnesses recorded under Section 164 of the Code of Criminal Procedure. The role attributed to the conduct of the petitioner prima facie appears to be evidently present. Furthermore, two of the co-accused are still absconding and not been apprehended as yet. We are further informed that one of the co-accused has been enlarged on bail.

The State opposes the prayer for bail. It is submitted that the co-accused, who was enlarged on bail, reaped the benefit of the statutory provisions and not on the consideration of the materials unearthed against him. It is further submitted that complicity of the petitioner to the commission of an alleged offence cannot be ruled out in view of the materials found during the investigation and, therefore, the prayer for bail should be rejected.

It is no doubt true that the earlier applications filed by the petitioner, were rejected by this Court recording prima facie finding. We independently perused the materials from the case diary and the statement of the so-called eyewitnesses recorded under Section 164 of the Code of Criminal Procedure and the role of the petitioner to the commission of the alleged offence, we do not feel that it is a fit case where the petitioner should be enlarged on bail.

As such, the prayer for bail is **rejected**.

The application being **CRM 1132 of 2021** is accordingly **dismissed**.

However, it is matter of great concern that despite request made by this Court to show progress in the matter, it is still languishing in the docket of the Magistrate Court as the case has not been committed for obvious reasons that two of the co-

accused persons are still absconding. The right to speedy trial is enshrined under the Constitution of India. We do not find any fetter on the part of the concerned Court to take a decision thereupon so that the matter can be brought to its logical end at an earliest.

Let this order be communicated by the State to the concerned Magistrate for necessary directions to be passed in this regard.

(Harish Tandon, J.)

(Bibek Chaudhuri, J.)