

25-03-2021
subha
Ct. no. 28
Item no.103

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction

C.R.M. No. 1284 of 2021

Hafijul Mondal @ Hafizul Mondal
-vs-
The State of West Bengal
(Via video-conference)

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with ST no. 6 of 2017 arising out of Canning Police Station Case No.770 of 2016 dated 26th November, 2016 under sections 302/201/120B/34 302 of the Indian Penal Code.

Mr. Angshuman Chakraborty
Mr. S. S. Saha

...for the petitioner.

Mr. Saibal Bapuli, APP
Mr. Aarani Bhattacharya

... for the State.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. The entire case is based on circumstantial evidence. A co-accused person namely, Chhaya Mondal, w/o Hafizul Mondal has already been enlarged on bail. Upon completion of investigation, charge sheet has been submitted and the petitioner is languishing in custody since 28th November, 2016. Out of 25 witnesses, only 5 witnesses have been examined and as such there no possibility of conclusion of the trial in the near future.

He further submits that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed by Article 21 of the Constitution of India and in the said conspectus further detention of the petitioner is not warranted.

Mr. Bapuli, learned Additional Public Prosecutor appearing for the State opposes the petitioner's prayer for bail and submits that the trial has proceeded substantially and the delay which has occasioned towards conclusion of trial is not totally attributable to the State. Furthermore, the period of delay stands intervened by a period lost due to the pandemic.

Heard the learned advocates appearing for the respective parties 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 since 28th November, 2016 and there is no possibility towards early conclusion of the trial.

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 favour of 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 since 28th November, 2016, is not warranted.

Accordingly, we direct that the petitioner namely, **Hafijul Mondal @ Hafizul Mondal** shall 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 Chief Judicial Magistrate, Alipore, South 24 Parganas.

The petitioner shall not leave the jurisdiction of Canning Police Station and shall meet with the Officer-in-Charge of Canning Police Station once a week on and from 8th April, 2021 until further orders. He shall also attend the trial court on the dates specified for hearing.

While on bail, the petitioner shall not intimidate the witnesses or tamper with the evidence in any manner whatsoever.

In the event the petitioner fails to comply with the above directions without any justifiable cause, the trial court shall be at liberty to cancel his bail, without reference to this court.

The application for bail being CRM 1284 of 2021 is, accordingly, disposed of.

[Tirthankar Ghosh, J]

[Tapabrata Chakraborty, J]