

01.06.2021

Court No.28
rpan / 11

CRM 1715 of 2021

(Via video Conference)

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

And

In Re : **Samiran Biswas**

Petitioner.

Mr. Sayan De,

Mr. Sayan Kanjilal

... for the Petitioner.

Mr. Sudip Ghosh,

Mr. Apurba Kumar Datta,

Mr. Bitasok Banerjee

... for the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Hanskhali Police Station Case No. 02 of 2018 dated 02.01.2018 under Sections 326/302/34/120(B) of the Indian Penal Code.

Mr. De, learned advocate appearing for the petitioner submits that the alleged offence occurred in a fit of anger without intending consequences to actually follow. There was no previous enmity between the parties and there was no intent on the part of the petitioner to injure the deceased. The incident occurred during a picnic. After occurrence of the said incident, the petitioner was arrested on 03.01.2021. Upon completion of investigation, charge sheet has been submitted, however, the charges have not yet been framed and as such there is no possibility towards early conclusion of the trial. In the said conspectus, further custodial

detention of the petitioner, who is in custody since 3rd January, 2018, is not warranted.

Mr. Ghosh, learned advocate appearing for the State opposes the petitioner's prayer and submits that the petitioner's prayer for bail was previously rejected twice, taking into consideration the gravity of the offence. The delay, which has occasioned towards conclusion of the trial, is not attributable to the State. In the said conspectus and considering the stage of the proceeding, the petitioner's prayer needs to be refused. Let the report of the Sub Inspector, Hanskhali Police Station, as produced, be kept on record.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

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 three years 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].

Applying such proposition to the facts of the present case, we are of the opinion that further detention of the petitioner is not warranted.

Accordingly, we allow this application and direct that the petitioner, namely, **Samiran Biswas**, shall be released on bail upon furnishing a bond of ₹10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Ranaghat, Nadia.

The petitioner shall attend the learned trial court on every date as 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.

With the aforesaid observations, the application for bail, being CRM No. 1715 of 2021, is 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.)