

01.06.2021
Court No.28
Item No. 18
CP

CRM 1932 of 2021
(via video conference)

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

And

In Re : **Kabul Ali**

Petitioner

Ms. Minoti Gomes
Mr. Partha Sarathi Das
Mr. Mrityunjoy Chatterjee

For the Petitioner

Mr. Swapan Banerjee
Mr. B. Bhattacharya

For the State

The present application has been preferred in connection with Chanchal Police Station Case No. 890 of 2019 dated 21.10.2019 under Sections 489B/489C of the Indian Penal Code.

Ms. Gomes, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. The allegations levelled against the petitioner are in the abstract. There is no incriminating material against him. Upon completion of investigation charge sheet has also been submitted and, as such, further detention of the petitioner, who is in custody since October 21, 2019, is not necessary. There is also no possibility towards early conclusion of the trial.

Mr. Banerjee, learned advocate appearing for the State opposes the petitioner's prayer and submits that the petitioner's prayer was rejected four times earlier and in view thereof, the petitioner is not entitled to the relief as prayed for.

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].

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, **Kabul Ali**, 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 Chief Judicial Magistrate, Chanchal, Malda.

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. 1932 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.)