

28.06.2021
Court No.30
Item No. 26
Avijit Mitra

**CRM 3277 of 2020
(through video Conference)**

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

And

In Re : **Chandan Khatik**

Petitioner

Mr. Bitasok Banerjee,
Mr. A. Salm

For the Petitioner

Mr. Swapan Banerjee,
Mr. Suman De

For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Bhadreswar Police Station Case No. 86 of 2017 dated 28.02.2017 under sections 302/34 of the Indian Penal Code read with Sections 25/27 of Arms Act.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the petitioner was arrested on 4th March, 2017 and is languishing in custody for about 4 years and 4 months. Co-accused persons have already been enlarged on bail. Upon completion of investigation, charge sheet was submitted on 1st June, 2017 but till date charges have not been framed. In view thereof, there is no possibility towards early conclusion of the trial.

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

Drawing our attention to the documents annexed at pages 7 to 10 of the present application, Mr. Banerjee submits that the petitioner's prayer for bail was rejected by orders dated 12th October, 2018 and 3rd April, 2019. In both the said orders, in view of the protracted period of detention of the petitioner, the Hon'ble Court issued directions towards early conclusion of the trial. In spite of such direction there has been no progress in the trial.

Mr. De, learned advocate appearing for the State opposes the petitioner's prayer and submits that there are materials on record which clearly reveal direct involvement of the petitioner in the alleged offence. The delay towards conclusion of trial, which has occasioned, is not attributable to the State. Such delay stands intervened by a period lost due to the pandemic.

We have heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

Records reveal that the charges have not been framed till date in spite of earlier directions of this Court. The petitioner is languishing in custody since 4th March, 2017 and there is also no possibility towards conclusion of the trial in near future. It also appears that the petitioner cannot be held responsible for the delay.

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 of the Constitution of India in the case of *Hussainara Khatoon – Vs- State of Bihar, Patna*, reported in 1980 1 SCC 81 was exhaustively considered in the case of *Abdul Rehman Antulay & Ors. –Vs- R.S. Nayak & Anr.*, reported in 1992 1 SCC 225 and it was *inter alia* observed that a fair, just

and reasonable procedure implicit in Article 21 of the Constitution of India 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 should be granted liberally unless custodial detention is absolutely essential [see the order passed by the Hon'ble Supreme Court in Re: *Contagion of Covid-19 Virus in prisons*].

Applying the proposition of law to the facts of this case, we are of the opinion that further detention of the petitioner, who is in custody since 4th March, 2017, is not warranted.

Accordingly, we direct that the petitioner, namely, **Chandan Khatik**, 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, Chandannagore, Hooghly with a further condition that the petitioner shall appear before the learned Court below on all the dates as specified for hearing.

It is further directed that the petitioner shall not tamper with the evidence or intimidate the witnesses.

In the event he fails to comply with the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 3277 of 2020 is disposed of.

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

(Suvra Ghosh, J)

(Tapabrata Chakraborty, J)