

24.05.2021

Court No.28
Avijit Mitra /70

CRM 3022 of 2021

(Via video Conference)

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

And

In Re : **Milan Gayen & anr.**

Petitioners

Mr. Sandip Chakraborty,

Mr. Ashok Das,

Ms. Ayana Dey

For the Petitioners.

Mr. Ranabir Roy Chowdhury,

Mr. Mainak Gupta

For the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioners in connection with Sankrail Police Station Case No. 1041 of 2016 dated 18.12.2016 under Sections 395/397/412 of the Indian Penal Code.

Mr. Chakraborty, learned advocate appearing for the petitioners submits that the petitioners have been falsely implicated in the alleged offence. No overt act has been attributed to the petitioners. Co-accused persons, similarly situated with the petitioners, have been enlarged on bail. The trial is in progress and out of fourteen witnesses only nine have been examined. In the said conspectus, further detention of the petitioners, who are in custody for more than four years, is not necessary.

He submits that independent witnesses have not identified the petitioners on the dock. In support of such contention, he has

placed reliance upon the evidence of P.W.2, namely, Daihan Mollah and P.W.7, namely, Alok Pashi.

He further submits that a co-accused person namely Alamgir Sardar who is similarly situated with the petitioners had already been granted bail on 1st March, 2021 by a Coordinate Bench of this Court in an application being CRM No.494 of 2021.

Mr. Roy Chowdhury, learned advocate appearing for the State opposes the petitioners' prayer and submits that the co-accused person, namely, Md. Akbar Ali Mollah, was enlarged on bail since he was not identified in the course of T.I. parade. The petitioners herein have been identified in the T.I. parade and as such, they are not similarly situated with said Md. Akbar Ali Mollah.

We have perused the evidence of P.W.2, namely, Daihan Mollah and P.W.7, Alok Pashi as well as the contents of the T. I. Parade Form and *prima facie*, it appears that there are inconsistencies. Furthermore, the petitioners are languishing in custody for a period of more than four years and there is also no possibility towards early conclusion of trial. In view thereof, we are of the opinion that further detention of the petitioners is not warranted in the facts and circumstances of the case.

Accordingly, we direct that the petitioners, namely, **Milan Gayen and Ayub Ali Mollah @ Molla**, 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 Chief Judicial Magistrate, Howrah.

The petitioners shall attend the trial court on the dates specified for hearing and shall also meet with the Officer-in-charge, North Port Police Station once a week on and from 8th March, 2021 until further orders.

It is made clear that in the event the petitioners fail to comply with any of the aforesaid directions, without justifiable cause, the learned trial court shall be at liberty to cancel the petitioners' bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 3022 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.

(Bibek Chaudhuri, J)

(Tapabrata Chakraborty, J)