

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE ARIJIT BANERJEE**

And

The Hon'ble **JUSTICE BIVAS PATTANAYAK**

CRM 3682 of 2021

Aloke Samaddar

-Vs-

The State of West Bengal.

For the Petitioner/Appellant:

Mr. A. Mitra, Adv.
Mr. Amit Halder, Adv.
Mr. N. Mollick, Adv.

For the State:

Mr. Sudip Ghosh, Adv.
Mr. A. Kumar Datta, Adv.

Heard on:

02.09.2021.

Judgment on:

30.09.2021.

BIVAS PATTANAYAK, J. : –

1. This is an application for bail in connection with a case under Section 120 B/395/397 of the Indian Penal Code and 25 (b) (a)/27 Arms Act.

2. The case of the prosecution in brief is that the accused-petitioner in connivance with one other entered the room of the complainant, forcibly assaulted the victim / complainant with "*Bhojali*" and fled away in a taxi with valuables of the complainant. Furthermore, it is alleged that there has been

recovery of one gold finger ring and one Arab Republic of Egypt currency note from the possession of the accused-petitioner. On such basis Netaji Nagar Police Station case no. 48 of 2016 dated 09.02.2016 under Section 120B/395/397 of the Indian Penal Code and Section 25 (a) (b) / 27 of the Arms Act was initiated.

3. Learned Advocate appearing on behalf of the accused-petitioner submitted that in relation to the present case he was arrested on 01.03.2016 and till date he is languishing in custody, which is for a period of more than 5 years. Further after filing of the charge-sheet, the case has been transferred to Additional District & Sessions Judge, Fast Track Court, Second Court, Alipore, 24-Parganas (South) for trial and disposal. He drew our attention to the fact that out of 45 witnesses only 7 witnesses have been examined so far and there is remote possibility of early completion of trial. He further submitted that due to such delay in conclusion of trial, as above, there is unjustified deprivation of personal liberty of the accused-petitioner resulting in violation of his fundamental right to life and liberty as envisaged under Article 21 of the Constitution of India. In support of his contention, he has placed reliance on the decision of the Hon'ble Apex Court passed in **Hussainara Khatoon & others versus Home Secretary, State of Bihar** reported in **AIR 1979 SC 1369** and **A.R Antulay versus R.S Narayan & another** reported in **AIR 1988 SC 1531**. He further went on to submit that on the ground of such protracted detention one of the co-accused namely Hajiful Ali has been granted bail by the co-ordinate bench of this Hon'ble Court in CRM

no. 409 of 2021. As this accused-petitioner is similarly circumstanced and stands on the same footing, he may also be enlarged on bail.

4. In reply to the aforesaid contention raised on behalf of the accused-petitioner, learned Advocate appearing on behalf of the State at the very outset concedes to the principles of law as put forth on behalf of the accused-petitioner relating to Article 21 of the Constitution of India passed in **Hussainara Khatoon (supra)** and **A.R Antulay (supra)**. However, opposing the bail prayer of the accused-petitioner, he submitted that the present petitioner is a habitual offender and was previously convicted in a Sessions case being no. 23(07) of 2008 [(corresponding to Sessions Trial no. 4(11) of 2008] on 30.03.2012 by the learned Additional Sessions Judge, Fast Track, 5th Court, Barasat, 24-Parganas (North) and the aforesaid sentence was suspended by this Hon'ble Court on 03.12.2015 in CRA No. 746 of 2014 (CRAN No. 3880 of 2015) and the petitioner was granted bail. Soon thereafter on being released this petitioner got involved in the alleged offence in the month of February 2016, which is within a period of two months of his release. Moreover the present petitioner has been identified in Test Identification Parade and as such his complicity and nexus in the alleged offence is palpably transparent and clear. He asserted on the aspect that in the event of release of this accused-petitioner on bail it is likely to lead to commission of further criminal offence and there is every possibility of this petitioner absconding and evading trial. Further, he pointed out that this accused-petitioner does not stand on the similar footing as of the accused who has been granted bail by the Hon'ble

Court in view of the fact that the said accused did not have any criminal antecedents as of the present petitioner.

5. We have heard the learned counsel appearing for the petitioner as well as for the State. Perused the material in the case diary.

Before getting into the merits of the considerations regarding bail, we may usefully reproduce the observation of Hon'ble Supreme Court made in **Prasanta Kumar Sarkar versus Ashis Chatterjee and another** reported in (2010)14 SCC 496 that while exercising the power for grant of bail the court has to keep in mind certain circumstances and factors.

"9 among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i)whether there is any prima facie or reasonable ground to be believed that the accused had committed the offence,

(ii) nature and gravity of the accusation;

(iii)severity of the punishment in the event of conviction;

(vi)danger of the accused absconding or fleeing , if released on bail;

(v)character and behaviour, means, position and standing of the accused;

(vi)likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced;

(viii) danger , of course , of justice being thwarted by grant of bail;"

6. In **Central Bureau of Investigation versus V. Vijay Sai Reddy** reported in (2013) 7 SCC 452 the court had reiterated the principle by observing thus:

“while granting bail the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused , circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, larger interest of the public/ State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

7. Now keeping in mind the aforesaid observations, of the Hon'ble Apex Court, let us assess the circumstances of the present case. The State at the time of hearing has conceded to the fact that out of 45 witnesses only 7 witnesses have been examined till date. As per the record the present petitioner is in custody for more than five years. Further one of the co-accused has been granted bail in CRM no.409 of 2021. Be that as it may, it is found from the copy of the order of CRA No.746 of 2014 that this petitioner was convicted in a trial before the Additional Sessions Judge, Fast Track Court , 5th Court at Barasat, North-24-Parganas, in Sessions case no. 23(07) of 2008

[corresponding to Sessions Trial no. 4(11) of 2008] on 30th March 2012 and his sentence was suspended and he was allowed to be released on bail in terms of this Court's order dated 03th December, 2015. The present case was initiated on 09.02.2016, against this accused-petitioner and others on the allegation of offence under Section 120(B)/395/397 of the Indian Penal Code and Section 25(a)(b)/27 of the Arms Act. This accused-petitioner was identified in the Test Identification Parade. Thus, it is primarily found from the materials on record that within a period of two months of his release on bail this petitioner once again got allegedly involved in a serious offence of dacoity and illegal dealing and using of arms. Fact remains that trial of the case has begun although few witnesses have been examined. However, keeping in mind the chronology of facts enumerated as above and the subsequent allegation of involvement in a serious offence cropping up against this petitioner after his release in a previous case indicates the possibility and likelihood of the petitioner committing further criminal offence. As we find from the material on record that this petitioner got involved in the present criminal offence after he was granted bail in a previous conviction, we are of the view that the likelihood of repetition of the offence is looming large and at the same time there is possibility of justice being thwarted and the larger interest of the state and public will be at stake. The petitioner has abused bail that was granted to him earlier by this Court by suspending his sentence in the earlier conviction.

8. It has been extensively argued on behalf of the petitioner with regard to deprivation of life and liberty of the petitioner due to his prolonged detention

resulting in violation of rights enshrined under Article 21 of the Constitution of India, putting reliance on the decision of Hon'ble Supreme Court made in **Hussainara Khatoon (supra)** and **A.R Antulay (supra)**. We are not unmindful of the protracted detention of the petitioner. However, liberty of an individual cannot be an absolute one and the society by the rule of law can withdraw such liberty when an individual becomes a danger to the society at large. In the foregoing paragraphs we have discussed the antecedents of the petitioner and his subsequent involvement in the present case after being released on bail in a previous conviction. Therefore, the act of the petitioner in perpetrating repeated offence makes him a danger to the society which cannot be ignored. In this regard we may reproduce a passage from **Neeru Yadav versus State of Uttar Pradesh and another** reported in (2014) 16 SCC 508.

“The issue that presented before us is whether this court annul the order passed by the High Court and curtail liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principles. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilization rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has

enormous impact on his mind as well as body. A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on the individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to the society. A society expects responsibility and accountability from its member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

9. The rule of law is undermined by any form of offence and accordingly measures are taken to prevent and reduce the risk of crime occurring and their potential danger to the individuals and society. The criminal justice system addresses the consequences of criminal behavior in society and has the objective of protecting the rights of the people and their safety to be precise.

10. Accordingly, in the light of above discussion and on an overall assessment of the available material as against the petitioner of his

involvement in repeated offences, we are not inclined to allow his prayer for bail.

11. However, keeping in mind the long detention of the petitioner and moreso, that only 7 witnesses have been examined out of 45 and also taking into account that a fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily, we are of the view that the trial of the case should be concluded at the earliest. Hence, the trial court is requested to conclude the trial of the case within a period of one year from the date of communication of this order.

12. The CRM no. 3682 of 2021 is accordingly dismissed, with the aforesaid observation.

(Bivas Pattanayak, J.)

I agree,

(Arijit Banerjee, J.)