

02.06.2021

Court No.28
rpan / 16

CRM 3727 of 2021

(Via video Conference)

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

And

In Re : **Kabiraj Murmu & Another**

Petitioners.

Mr. Kaushik Chaudhury,

Ms. Bursa Khatun

... for the Petitioners.

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 petitioners in connection with Balurghat Police Station Case No. 97 of 2019 dated 14.02.2019 under Sections 302/201 of the Indian Penal Code [Charge-sheet no.221 of 2019 dated 17.05.2019 under Sections 302/201/506/34 of the Indian Penal Code].

The learned advocate appearing for the petitioners submits that the petitioners have been falsely implicated in an incident which occurred on 13.02.2019. They along with eleven others were arrested in connection with the alleged incident. Out of them, six co-accused persons have already been enlarged on bail. The petitioners are similarly situated with the said persons. Upon completion of investigation, charge sheet has already been submitted and out of 34 witnesses, only four witnesses have been examined. In view thereof, there is no possibility towards early

conclusion of the trial and the petitioners are languishing in custody for 832 days.

Mr. Banerjee, learned advocate appearing for the State opposes the petitioners' prayer and submits that the persons, who have been enlarged on bail, are not similarly situated with the petitioners. The delay which has occasioned in the trial, is not attributable to the prosecution. In view thereof, the petitioners are not entitled to the relief, as prayed for. In support of his submissions Mr. Banerjee has drawn our attention to several documents in the case diary, including the statements of witnesses recorded under Sections 161 and 164 of the Code.

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

It appears that out of 34 witnesses, only four witnesses have been examined and as such, there is no possibility towards early conclusion of the trial. In the present pandemic situation and rapid proliferation of the virus, bail prayer needs to be considered liberally. Taking into consideration the fact that the petitioners are already in custody for more than 832 days and as six co-accused persons have already been enlarged on bail, we are of the opinion that further detention of the petitioners is not warranted.

Accordingly, we allow this application and direct that the petitioners, namely, 1. **Kabiraj Murmu** and 2. **Budhinath Soren @ Buddinath Soren** shall be released on bail upon furnishing a bond of `10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief

Judicial Magistrate, Balurghat, Dakshin Dinajpur and on a further condition that the petitioners shall reside outside the jurisdiction of Balurghat Police Station, until further orders save and except for attending the Trial Court on the dates specified for hearing and within a week from date they shall also inform the address where they would be residing to the Officer-in-Charge of Balurghat Police Station.

The petitioners shall remain present before the learned trial court on all the dates as specified for hearing.

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 their bail, in accordance with law, without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 3727 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.)