

06.08.2021
AKG

**CRM 4699 of 2021
(Through Video Conference)**

In Re: - An application under Section 439 of the Code of Criminal Procedure filed on 13th July, 2021 in connection with M. L. Case No. 03/2015 arising out of ECIR No. KLZO/02/2014 under Section 4 of the Prevention of Money Laundering Act, 2002.

And

In the matter of: Gautam Kundu

.... Petitioner

Mr. Sabyasachi Banerjee
Ms. Shrestha Bhattacharjee

..... For the Petitioner

Mr. Ranjan Roy

..... For the O.P./Enforcement Directorate

This is an application under Section 439 of the Code of Criminal Procedure, 1973 assailing the order no. 237 dated 16th June, 2021 passed by the learned Judge, Special CBI Court No. 1, Bichar Bhawan, Calcutta in connection with M. L. Case No. 03/2015 which arose out of ECIR No. KLZO/02/2014 under Section 4 of the Prevention of Money Laundering Act, 2002 thereafter making the prayer of the petitioner for bail to look after his minor child and old ailing mother.

I have heard Mr. Sabyasachi Banerjee, learned counsel for the petitioner and Mr. Ranjan Ray, and learned counsel for the opposite party/Enforcement Directorate.

This is for the second time that the petitioner has renewed his prayer for his release on interim bail to look after his old ailing mother and minor child on any condition. It is contended that the prayer of the petitioner for his release on bail on earlier occasion under Section 439 read with Section 436A of the Code of Criminal Procedure, 1973

was rejected which was registered as CRM 8345 of 2019 and the Court had directed to conclude the trial as per Section 309 of Cr.P.C. without accommodation of time to any parties. Subsequently, the petitioner preferred another bail application for interim bail due to prevailing pandemic COVID-19 and severity of risk to the health of the petitioner in the correctional home and the prison hospital considering the medical condition of the petitioner but the prayer was also rejected on 26th June, 2020 passed in CRM No. 4404 of 2020.

The petitioner again preferred bail application under Section 439 Cr.P.C. challenging the order dated 12th January, 2021 passed by the learned Judge, Special CBI Court No. 1 before the Hon'ble Court registered as CRM 648 of 2021 and interim bail was granted to the petitioner vide order dated 20th January, 2021 for a period of four days to see his old ailing mother and minor child aged about eight years on certain terms and conditions. The petitioner duly complied with the conditions and surrendered before the court and he is now in custody for more than six years and four months.

Mr. Sabyasachi Banerjee, learned counsel for the petitioner has invited my attention to various medical papers placed at page 237, 239 and 242 to submit that the mother of the petitioner is suffering from high grade endometrial carcinoma post-TAH-BSO (operated outside on 13th January, 2021 and is living in precarious condition. As such, petitioner submits for his release on interim bail for a brief period to meet his old ailing mother and minor child. This court earlier wanted to know about fate of the trial which could not be concluded in spite of direction given by this court while rejecting the bail prayer sought for under the provisions of Section 436A of the Code of Criminal Procedure, 1973, on the consideration that it was

the accused petitioner who was creating impediment to the opposite party Enforcement Directorate in not getting the trial completed.

Mr. Ranjan Ray, learned counsel for the opposite party Enforcement Directorate submits that a report in compliance with this court's order with regard to the progress of prosecution case before the learned Judge, Special CBI Court and gives the tabular details of hearing dates and proceedings as under :

<i>Sl. No.</i>	<i>Hearing Date (DD/MM/YYYY)</i>	<i>Proceedings</i>
1.	29/02/2020	<i>The matter was fixed for hearing of the bail application and consideration of charge. However, Sh. Arun Mukherjee was not produced by jail authority due to his illness and accused Sh. Amit Banerjee was absent.</i>
2.	20/03/2020	<i>Matter was fixed for charge framing, out of 7 accused only BK Malik and Sudhir Shaw were present. The accused person Sh. Amit Banerjee on bail was absent. Accused in JC were not produced. Further, in view of the resolution of local Bar Association dated 17.03.2020 in corresponding to Memo of Hon'ble High Court of Calcutta no.1354 dated 15.03.2020 and Memo No.1455 dated 19.03.2020 the case was adjourned.</i>
3.	16/04/2020	<i>Lockdown period.</i>
4.	18/06/2020	<i>Lockdown period.</i>
5.	1/7/2020	<i>Matter was fixed for framing of charges. Accused persons were not physically present. Only Custody Warrants of four accused persons namely, Sh. Gautam Kundu, Arun Mukhejee, Ashok Kr. Saha and Shibmoy Dutta were received and they were not produced.</i>
6.	4/8/2020	<i>Matter was Fixed for framing of charges and</i>

		<i>production of the accused persons. The accused persons in JC were not present. All accused persons on bail except Sh. Amit Banerjee were present. The Ld. Court observed that due to worst situation of Covid 19 all accused persons were not found present in the court room for maintaining social distance and also from spreading the pandemic.</i>
7.	30/09/2020	<i>Matter was fixed for charge framing, out of 7 accused only BK Malik and Sudhir Shaw were present. Sh. Amit Banerjee accused on bail was absent. Accused in JC were not produced.</i>
8.	13/11/2020	<i>Matter was fixed for charge framing, out of 7 accused only BK Malik and Sudhir Shaw were present. Sh. Amit Banerjee accused on bail was absent. Accused in JC were not produced.</i>
9.	24/12/2020	<i>Matter was fixed for framing of charges against accused persons. When the matter was taken up and when substance of acquisition in present of the accused persons at that moment the accused Sh. Gautam Kundu filed one application stating inter-alia documents regarding present case were not available with them at that moment for which the accused persons failed to contradict the substance of acquisition as read over and explained to accused persons. The accused persons sought fresh date. Further application of Sh. Gautm Kundu regarding medical treatment was taken up and heard and directions were issued to Superintendent, Presidency Correctional Home.</i>
10.	8/1/2021	<i>Accused persons were present. The report was sought from Superintendent,</i>

		<i>Presidency Correctional Home was received and were kept on record. Sh. Gautam Kundu filed fresh application with a prayer for seeking directions to Superintendent of Presidency Correctional Home to submit all medical documents of Sh. Gautam Kundu before the court. 12.01.2021 was fixed for hearing of the petition.</i>
11.	12/1/2021	<i>The date was fixed for hearing of the petition dated 08.01.2021 filed by Gautam Kundu with a direction upon Superintendent Presidency Correctional Home to submit all medical documents of Gautam Kundu before the learn it Court. The Ld. Special Court considered all aspects and circumstances of the case and did not find any merit on the petition dated 8th January, 2021.</i>
12.	9/2/2021	<i>Bail application filed by Sh. Gautam Kundu. Matter was fixed for framing of charges. Arguments were advanced for framing of charges on behalf of prosecution and completed.</i>
13.	12/2/2021	<i>Hearing was held on the prayer of accused person Sh. Arun Mukherjee to plead guilty and seeking mercy from the Ld. Court in respect of quantum of sentence. The accused person Sh. Arun</i>

		<i>Mukherjee pleaded guilty. Charges were framed in respect of Sh. Arun Mukherjee one of the accused persons and he confessed his crime under PMLA. Therefore, he was ordered to suffer 7 years of imprisonment and fine of Rs.2,50,000/-.</i>
14.	26/02/2021	<i>The case was fixed for framing of charges for accused persons other than Sh. Arun Mukherjee. The accused persons Sh. Gautam Kundu, Sh. Shibmoy Dutta and Sh. Ashok Saha were produced form J/C while persons Sh. Amit Banerjee, Sh. B. K. Malik and Sh. Sudhir Shaw were present. The substance of acquisition u/s. 3 of Prevention of Money Laundering Act, 2002 were read over to them however, they claimed for trail and pleaded not guilty. Next date was fixed for 21.04.2021 for evidence and 04.03.2021 was fixed for hearing of bail application of accused person Sh. Gautam Kundu.</i>
15.	4/3/2021	<i>Hearing of Bail application of accused person Sh. Gautam Kundu.</i>
16.	18/03/2021	<i>Bail Rejection order of Sh. Gautam Kundu passed by the Ld. Court.</i>
17.	21/04/2021	<i>Date was fixed for evidence of prosecution witness of Sh. Manoj Kumar</i>

		<i>IO of the case. Presently he is posed in Mumbai in Customs Office. He appeared in compliance of the summons. Hearing could not take place since the accused persons Sh. Gautam Kundu, Sh. Shibmoy Dutta and Sh. Ashok Saha were not produced from J/C. The accused person on bail Sh. Amit Banerjee was also not present. Further, the law clerk of the said accused person informed the Ld. Court that Ld. Counsel Sh. Biplab Goswami would not be present due to personal reasons. However, Ld. Advocate for accused persons Sh. Sudhir Shaw and Sh. B. K. Malik submitted that in absence of the accused persons it was not possible for examination of witness and sought adjournment. Since, the Ld. Advocate for accused Sh. Gautam Kundu and others failed to appear before the court and when Local Bar requested the Ld. Court not to pass any adverse order against any litigants or the Ld. Advocate for pandemic COVID – 19, the case was adjourned. The matter was fixed for 21.06.2021.</i>
18.	2/6/2021	<i>Bail application dated 02.06.2021 was</i>

		<i>filed Sh. Gautam Kundu before the Ld. Special Court.</i>
19.	14/06/2021	<i>Bail application of Sh. Gautam Kundu was heard.</i>
20.	16/06/2021	<i>Bail Rejection order of Sh. Gautam Kundu passed by the Ld. Court.</i>
21.	21/06/2021	<i>The accused persons on bail remained absent without steps. The accused persons in judicial custody remained absent since they were not produced by Jail Authority. Since, the matter was fixed for evidence of Sh. Majnoj Kumar, IO of the case and he was very much present. The Ld. Court observed that there was no possibility of examination since the accused persons were not present. Case was adjourned due to non-appearance of accused persons and COVID- 19 spread. The matter was fixed for evidence of Sh. Manoj Kumar, IO of the case.</i>
22.	6/8/2021	<i>Matter is fixed for evidence of Sh. Manoj Kumar, IO of the case. He is appearing today before the Ld. Special Court.</i>

It is further pointed out that Mr. Goutam Kundu, the petitioner was the then Director of accused company Rose Valley Real Estates Construction Limited, now, left in limbo of Presidency Correctional Home at Alipore and has given details of the list of accused persons

arrayed in this particular case. It is submitted that there are fourteen witnesses for the prosecution and that several accused persons intentionally filed one after another applications to delay the trial. Although, at the time of framing of the charge, one accused person namely, Arun Mukherjee pleaded guilty and he was ordered to suffer imprisonment of seven years and imposed fine of Rs.2,50,000/- on him. At the time of evidence petitioner had filed 25th number of bail applications and at the time of evidence of the witnesses present before the Court, due to non production of the accused persons due to Covid –19 pandemic, the trial was adjourned. Since, the petitioner was taking various plea and tactics, his bail prayer was rejected by imposition of cost of Rs.20,000/- in CRM No.4404 of 2020.

Be that as it may, golden triangle in the Indian Constitution is of significant importance to safeguard citizens basic human right enshrined under Article 21 of the Constitution of India and a under trial prisoner has right of speedy trial and for that any accused who is left in the limbo of jail incarcerated for a longer period has every right to file bail applications for his release but the Court should be alive to the situation that trial be expeditiously concluded adhering to Section 309 of Cr.P.C. in case of a person in judicial custody and should not be left in limbo without trial. It is very serious situation to take note of. The learned Court, in absence of production of accused during trial can insist for representation by the learned advocate for the accused persons facing trial under Section 317 of Cr.P.C. and to proceed with the trial by examining the prosecution witnesses in order to tide over the situation of pandemic due to Covid –19 since March, 2020. The Trial Court should even conduct the trial through video conference taking note of the deposition of the witnesses and the accused

persons in the judicial custody can also be produced through video link by the Superintendent of the Correctional Home without any legal impediment.

However, this Court understands that the petitioner is put behind the bar without any outcome of the trial being concluded. It is also incumbent on the part of the defence lawyer to represent the accused under Section 317 of the Code of Criminal Procedure in the hour of need as the right of a prisoner to speedy trial does fall within the purview of Article 21 of the Constitution of India.

Similarly, if the prosecution has got certain impediment in not producing the witnesses before the Court, it can provide the infrastructure to the Court to conduct the trial through video link and witnesses can also be examined through video conference, if the witnesses are unable to physically attend the Court since it is imperative on the part of the court to conduct the trial adhering to the provision of 309 of the Code of Criminal Procedure.

In the context of the discussion above and upon hearing learned counsel for the parties, I am of the view that the petitioner-accused is seeking his release on interim bail for a brief period to meet his old ailing mother and minor child, he may be released on interim bail for a period of seven (7) days from 9th August, 2021, till 15th August, 2021. Accordingly, the petitioner namely, Gautam Kundu be released on interim bail upon furnishing a bond of Rs.50,000/- (Rupees Fifty Thousand only), with cash deposit of like amount, with two sureties of Rs.10,000/- (Rupees Ten Thousand Only) each, one of whom has to be local, to the satisfaction of the learned Judge, Special

CBI Court, Kolkata, on further condition that he shall stay at the residence of her mother during the said period of interim bail to take care of his old ailing mother and to look after his minor child. Secondly, that he shall surrender on 16th August, 2021 at 10.30 a.m. in the Presidency Correctional Home at Alipore and report be submitted to the learned trial court.

The Enforcement Directorate shall be at liberty to take assistance of two Armed Police Personnel from the concerned local police station to remain as Houseguard at the residence of the mother of the petitioner and the concerned police station shall abide by this condition.

Accordingly, the prayer for interim bail is allowed.

Thus, CRM 4699 of 2021 is disposed of.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Shivakant Prasad, J.)