

CRM 6233 of 2021

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **Binpur** P.S. Case No. **12/2010** dated **15.02.2010** under Sections **121/121A/122/124A** read with Section **120B** of the Indian Penal Code and Sections **20/16(1)(a)/16(1)(b)/18/38/39** of the Unlawful Activities (Prevention) Act, 1967 and Sections **3/4** of the Explosive Substances Act and Sections **25(1)(b)** of the Arms Act and Section **302** read with Section **120B** of the Indian Penal Code.

And

In the matter of: **Dhriti Ranjan Mahato**

....Petitioner

Mr. Kaushik Gupta
Mr. Arijit Bhusan Bagchi

...for the Petitioner

Mr. N. Ahmed
Ms. Ayantika Roy.

...for the State.

The petitioner is in custody for 11 years and 9 months. It is submitted they have not contributed to the delay in the trial. Co-accused Arnab Dam and others have been enlarged on bail in CRM 3226 of 2019 and CRM 374 of 2020.

Additional Public Prosecutor submits that the allegations are very grave and relate to murder of a large number of police personnel.

We have considered the materials on record. Petitioner stands on the same footing with the co-accuseds who have been enlarged on bail. He has not been identified by any of the witnesses who have been examined till date. There is inordinate delay in conducting trial of the case. Order sheets produced before us show that the petitioner who is languishing in jail, for reasons best known to the prosecution, was not produced before the Court resulting in protraction of the proceeding. While the allegations are very grave and relates to murder of police

personnel, the failure of the constitutional duty of the State to ensure fair justice to the victims of crime on the one hand and to ensure fair and speedy trial for the undertrials on the other hand is starkly evident in the instant case.

As indicated above, petitioner is languishing in jail for more than 11 years. In view of the aforesaid fact and the extent of complicity of the petitioner in the alleged crime in the backdrop of the fact none of the witnesses till date have identified him, we are of the opinion further incarceration would amount to infraction of his fundamental right under Article 21 of the Constitution of India. In ***Union of India -vs- K. A. Najeeb***¹ the Apex Court held gravity of the offence including statutory restrictions relating to grant of bail on merits would not whittle down the power of the Constitutional Court to grant bail to an undertrial whose fundamental right to speedy trial stands infringed. The ratio of the said decision clearly applies to the facts and circumstances of the present case. Moreover, co-accuseds similarly circumstanced with the petitioner are on bail. Hence, we are inclined to extend the same privilege to the petitioner also.

The prayer for bail is, thus, allowed.

Let the petitioner 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 Chief Judicial Magistrate, Paschim Medinipur, subject to the condition that he shall appear before the learned trial court regularly on every date

¹ (2021) 3 SCC 713

of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

The application for bail is, thus, disposed of.

(Joymalya Bagchi, J.)

(Bivas Pattanayak, J.)