

08.12.2021
Court No.32
Item No. 178
Avijit Mitra

C.R.M. 6931 of 2021 (via video conferencing)

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

And

In Re : Biswa @ Biswajit Laskar

Petitioner

Mr. Souvik Mitter,
Mr. Ranadeb Sengupta,
Mr. Kalyan Kumar Bhattacharjee

For the Petitioner

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 petitioner in connection with Jagaddal Police Station Case No. 472 of 2017 dated 09.05.2017 under sections 302/34 of the Indian Penal Code and Sections 25/27 of the Arms Act.

Mr. Sengupta, learned advocate appearing for the petitioner submits that the victim succumbed due to the cumulative effect of all the injuries inflicted. However, out of six co-accused persons, five have already been granted bail. The petitioner is suffering incarceration for about 4 years 6 months. There are 28 witnesses and only one witness has been examined till date and as such there is no possibility towards conclusion of the trial in the near future.

He further submits that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the

right guaranteed under Article 21 of the Constitution of India and in the said conspectus, further detention of the petitioner is not warranted and the petitioner may be enlarged on bail on any stringent condition.

Mr. De, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to several documents in the case diary including the statement of the witnesses and the *post-mortem* report.

He further submits that the petitioner's prayer was rejected twice earlier by this Court and there are incriminating materials which clearly reveal his direct involvement in the alleged offence. There had also been recovery on the basis of the leading statement of the petitioner.

He further submits that the delay towards conclusion of trial, which has occasioned, is not totally attributable to the State. Furthermore, such delay stands intervened by a period lost due to the pandemic.

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

From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay which has occasioned. He is languishing in custody for about 4 years 6 months and there is no possibility towards early conclusion of the trial.

In several cases, the Hon'ble Supreme Court has granted bail owing to the long period of incarceration and the unlikelihood of the trial being completed any time in the near future. The

exposition of Article 21 in the case of *Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna*, reported in (1980) 1 SCC 81 was exhaustively considered afresh in the case of *Abdul Rehman Antulay and Ors. Vs. R.S.Nayak and Anr.*, reported in (1992) 1 SCC 225 and it was *inter alia* observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice.

Applying such proposition of law to the facts of the case and since other co-accused persons have already been enlarged on bail and as there is no likelihood that he would influence the witnesses, we are of the opinion that further detention of the petitioner is not necessary.

Accordingly, we allow this application and direct that the petitioner, namely, **Biswa @ Biswajit Laskar**, shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Barrackpore with a further condition that without the leave of the learned Court below the petitioner shall not leave the jurisdiction of Jagaddal Police Station save and except for attending the learned Court below on all the dates, as specified for hearing and shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the

learned trial court would be at liberty to cancel his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 6931 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.

(Sugato Majumdar, J)

(Tapabrata Chakraborty, J)