

02.03.2021

Ct.No.28

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C.R.M. 9382 of 2020

(Via video Conference)

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Sessions Trial No. 12 (6) of 2016 (Special Case no.298 of 2015) under Section 376D of the Indian Penal Code [arising out of Baruipur P.S. Case No. 456 of 2013 dated 06.05.2013 under Section 376(2)(g) of the Indian Penal Code of the Indian Penal Code];

And

In Re: **Mabul Sk** alias **Maimuddin Sekh**

... Petitioner.

Mr. Subhasish Roy,

Mr. Tamal Banerjee

... For the Petitioner.

Mr. Binay Panda,

Ms. Pushpita Saha

... For the State.

Mr. Roy, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated and he is in custody since 24th October, 2013. One co-accused person, namely, Kochan Sk. @ Samsuddin has been enlarged on bail. Upon conclusion of investigation charge sheet has been submitted on 7th November, 2013 and thereafter charge has been framed on 30th June, 2016 but till date out of twelve witnesses none had been examined, and as such, there is no possibility of conclusion of the trial in the near future. Deprivation of personal liberty without ensuring speedy trial would not be in consonance with the

right guaranteed by Article 21 of the Constitution of India. In view thereof, the petitioner should be enlarged on bail.

Mr. Panda, learned advocate appearing for the State opposes the petitioner's prayer and submits that the allegations against the petitioner are not in the abstract and there are materials on record which clearly reveal the involvement of the petitioner in the alleged offence.

Placing reliance upon a report, Mr. Panda submits that on several dates the court could not function due to resolutions adopted by the local bar. On some occasions the presiding officer was on leave. Thus, the delay which has occasioned is not totally attributable to the State. Furthermore, the period of delay stands intervened by a period lost due to the pandemic. Let the report, as placed, be kept on record.

He further submits that in the event the petitioner is enlarged on bail, the possibility of the witnesses being influenced cannot be ruled out.

From the sequence of facts, it appears that the petitioner cannot be solely held responsible for the delay which has occasioned. He is languishing in custody for more than seven years and there is no possibility of conclusion of the trial in the near future.

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 Khotoon 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 present case, we are of the opinion that further detention of the petitioner, who is in custody for more than seven years, is not warranted.

The petitioner, namely, **Mabul Sk** alias **Maimuddin Sekh**, shall be released on interim bail upon furnishing a bond of ₹10,000/- with two sureties of like amount, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas.

The petitioner shall not intimidate witnesses or tamper with evidence in any manner whatsoever and shall not leave the jurisdiction of Baruipur Police Station, save and except for attending the trial court on the dates fixed for hearing and shall meet with the Officer-in-Charge of the Baruipur Police Station once a week on and from 8th March, 2021 until further orders.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid conditions, without justifiable cause, the learned trial court would be at liberty to

cancel the petitioner's bail without any further reference to this Court.

The application being C.R.M. 9382 of 2020 is, accordingly, disposed of.

Personal appearance of the Deputy Superintendent of Police (Admn.), Baruipur Police District is dispensed with.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)