

15-02-2021
subha
Item no.7

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction

C.R.M. No. 9662 of 2020

Nazrul @ Nasrul @ Arjun @ Chikna Bachcha

-vs-

The State of West Bengal
(Via video-conference)

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Golabari Police Station Case No.996 of 2016 dated October 20, 2016 under section 302 of the Indian Penal Code, chargesheet submitted under Sections 302/379/411 IPC.

Mr. Dev Kumar Sharma

...for the petitioner.

Mr. Madhusudan Sur, Id. A.P.P

Mr. Dipankar Pramanick

... for the State.

Mr. Sharma, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated and is in custody since 21st October, 2016. Upon completion of investigation, charge sheet has been filed and the petitioner is languishing in custody since 21st October, 2016. Out of 11 witnesses, only one witness has been partly examined and in view thereof, there is no possibility of conclusion of the trial in the near future.

According to Mr. Sharma, 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.

Mr. Sur, learned Additional Public Prosecutor appearing for the State opposes the petitioner's prayer and submits that the petitioner is the sole accused. 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.

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

Mr. Sharma has placed before us the certified copies of the orders passed by the learned trial court on and from 18th April, 2019 to 19th August, 2020. A perusal of the same reveals that on numerous occasions, the petitioner was not produced from the correctional home. There are certain dates on which the court could not function due to resolutions adopted by the local Bar Association.

As regards the dates prior to 18th April, 2019, a report has been placed by Mr. Sur wherefrom it appears that the charge sheet and the supplementary charge sheet were submitted on 12th January, 2017 and 13th April, 2018 respectively. Thereafter, the charge was framed. During the period from 2nd May, 2018 till 18th April, 2019 only examination-in-chief of the PW1 could be completed, however, his cross-examination is still pending.

From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay which has occasioned. The petitioner is languishing in custody since 21st October, 2016 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 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 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 since 21st October, 2016, is not warranted.

Accordingly, we direct that the petitioner namely, **Nazrul @ Nasrul @ Arjun @ Chikna Bachcha** shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Howrah.

The petitioner is directed to attend the trial court on the dates specified for hearing and he shall reside within the jurisdiction of Golabari Police Station and shall inform the address where he would be residing, to the Officer-in-Charge of the said police station.

In the event the petitioner fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application for bail being CRM 9662 of 2020 is, accordingly, disposed of.

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]

