

01.09.2021

Court No.30
Item No. 04
Avijit Mitra

CRM 10910 of 2020

(Via video Conference)

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

And

In Re : Shamim Hossain @ Gill

Petitioner.

Mr. Debasis Kar,
Mr. Subhajit Chowdhury

... 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 Panduah Police Station Case No.59 of 2013 dated 22.02.2013 under Sections 302/120B of the Indian Penal Code and 25/27 of the Arms Act. Let the supplementary affidavit filed by the petitioner be kept on record.

Mr. Kar, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody for more than eight years and the case has not yet been committed. It is thus explicit that there is no possibility towards early 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 under Article 21 of the Constitution of India and in view thereof, further detention of the petitioner is not warranted in the facts and circumstances of the case. In support of such

contention, Mr. Kar has placed reliance upon a judgment dated 1st February, 2021 delivered by the Hon'ble Supreme Court in the case of *Union of India vs. K.A. Najib*.

Mr. Banerjee, learned advocate appearing for the State opposes the petitioner's prayer and submits that twenty four other criminal cases are pending against the petitioner. One co-accused person in the present case namely, Sk. Khajana is still now absconding. Another co-accused person, namely, Md. Sahid Ali had surrendered before the learned Court below only on 3rd March, 2021. The next date has been fixed before the Court of the learned Chief Judicial Magistrate, Sadar, Chinsurah, Hooghly on 15th September, 2021 for appearance and warrant of arrest. It is thus explicit that the delay which has occasioned is not solely attributable to the State. The period of delay also stands intervened by a period lost due to the pandemics. Let the report, as filed, be kept on record.

In reply, Mr. Kar further submits that the petitioner is on bail in the other criminal cases and that the co-accused person, namely, Sk. Sahid Ali was granted bail way back in the year 2014.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The present application has been preferred primarily on the ground of long detention. It appears from the report filed by the State that one accused person is still absconding whereas the other accused person has surrendered before the learned court below only in the month of March, 2021. Due to the pandemics,

normal functioning of the learned court below was affected for a substantial period of time. The delay which has occurred is thus not totally attributable to the State. The petitioner is involved in twenty four other criminal cases. Having regard to the petitioner's antecedents and the gravity of the offence, we are not inclined to exercise any discretion in favour of the petitioner and his prayer for bail is refused at this stage.

Accordingly, the application for bail, being CRM 10910 of 2020, is dismissed.

However, the learned Chief Judicial Magistrate, Hooghly is directed to take immediate steps to commit the case to the learned Sessions Court so that the charges can be framed and the trial may commence, as expeditiously as possible, preferably within the first week of November, 2021. Needless to observe, the learned Sessions Court shall take all possible steps and such other additional steps adhering to the mandate under Section 309 of the Code of Criminal Procedure and would be free to fix consecutive dates so that the trial may be concluded as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

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

(Rabindranath Samanta, J.)

(Tapabrata Chakraborty, J.)

