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20-05-2021

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Court 28

**C.R.M. 11017 of 2020  
(Via Video Conference)**

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Domkal Police Station Case No. 384 of 2019 dated 16.06.2019 under sections 302/286/34 of the Indian Penal Code read with Section 9(b) of the Explosive Act and Sections 27 of the Arms Act.

Utpal Mondal @ Imam Samunur @ Sabnur Mondal @ Alauddin Mondal & Ors.

Versus

State of West Bengal

Allowed

Mr. Sekhar Basu, Sr. Adv.  
Ms. Madhumita Basak, Adv.

...for the petitioners.

Mr. N. Ahmed, Adv.  
Md. Anwar Hossain, Adv.  
Benajir Hasna, Adv.

...for the State.

The learned Counsel appearing on behalf of the petitioners submits that the petitioner no.1, 2 and 3 are in custody for about 380 days, 473 days and 517 days respectively as on 21<sup>st</sup> February, 2020. It is submitted that the trial has not progressed after filing of the charge-sheet. They are languishing in jail for a considerable length of time without any trial which infringes their right to fair trial.

Mr. Sekhar Basu, learned Senior Counsel appearing for the petitioners has referred to two orders passed by the coordinate Benches i.e. (i) CRM 3222 of 2020 (In Re: Abdul Halim Molla @ Gajiu @ Gajol) passed on 28<sup>th</sup> April, 2020 and (ii) CAM 8871 of 2020 (In Re: Ajay Ghosh) passed on 1<sup>st</sup> December, 2020. It is submitted by Mr. Basu, learned Senior Counsel that the petitioners are on better footing and having regard to the fact that Ajay Ghosh was granted bail by a coordinate Bench after remaining in custody for 199 days with the accusation that he is one of the accused persons who fired on the victim, there is no reason why the petitioners may not be granted bail even it is assumed that the present petitioners are on the same footing with that of the other co-accused persons.

The learned Counsel appearing for the State opposes the prayer for bail and submits that the petitioner is a member of an unlawful assembly some of whom had fired at the victim. However, it is admitted by the learned Counsel for the State that the trial has not progressed after the charge-sheet has been filed.

Having considered the materials on record and keeping in mind the statements of the witnesses and the extent of complicity of the petitioner in the alleged crime, we are of the opinion whether petitioner had shared common intention with other members of the unlawful assembly may be assessed at the appropriate stage of the proceeding. That apart it appears that being aggrieved by the order passed on 28<sup>th</sup> April, 2020 in connection with the bail application filed by Abdul Halim Molla @ Gajlu @ Gajol, the State filed SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court did not interfere with the order of the coordinate Bench and SLP being Special leave to Appeal (Crl.) Nos. 6388-6389/2020 was dismissed on 13<sup>th</sup> January, 2021.

Hence, in view of the aforesaid facts and circumstances of the case and the period of detention suffered by the petitioners and as investigation is complete, we are inclined in granting bail to the petitioners in the instant case.

Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Murshidabad, on condition that they shall not intimidate the witnesses or tamper with evidence in any manner whatsoever and they shall appear before the trial court on every date of hearing and on further condition that while on bail the petitioners shall not leave the jurisdiction of Domkal Police Station until further orders except for attending Court proceeding.

In the event they fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail without further reference to this Court. It appears that there is tardy progress of the trial and it is unfortunate that after filing of charge-sheet, the matter has not progressed.

We direct the learned Sessions Judge to immediately take up the matter and prepare the time schedule for examination of witnesses and to conclude the trial as expeditiously as possible without granting any unnecessary adjournment to either of the parties, unless there are unavoidable reasons. If it is found that the present petitioners are adopting dilatory tactic and causing impediment to the trial, the trial court shall be at liberty to cancel the bail without further reference to this Court.

The application for bail is allowed.

The original case diary produced before us, be returned to the learned Counsel for the State.

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

**(Suvra Ghosh, J.)**

**(Soumen Sen, J.)**