

01.06.2021
Court No.28
Item No. 07
CP

CRM 11261 of 2020
(via video conference)

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

And

In Re : **Nasir Mallick**

Petitioner

Mr. Suman De

For the Petitioner

Mr. Saibal Bapuli
Mr. Arani Bhattacharya

For the State

The present application has been preferred in connection with Serampore Police Station Case No. 02/2018 dated 01.01.2018 under Sections 395/397 of the Indian Penal Code and adding Section 412 of the Indian Penal Code.

Mr. De, learned advocate for the petitioner submits that the petitioner has been falsely implicated in an alleged incident which occurred in the month of January, 2018. Allegations were levelled against five accused persons including the petitioner. The other four co-accused persons have already been enlarged on bail. Upon completion of investigation charge sheet has also been filed.

He further submits that in the charge-sheet there are 44 witnesses and, as such, there is no possibility towards early completion of the trial. In the said conspectus, further detention of the petitioner, who is in custody since November 17, 2018, is not necessary.

Mr. Bapuli, learned advocate appearing for the State, vehemently opposes the petitioner's prayer and submits that the petitioner has antecedents and he was identified in the T.I. parade. The petitioner's prayer was earlier rejected by a coordinate bench of this court on June 26, 2020.

He further submits that trial has already commenced and out of total 44 witnesses, 13 witnesses have already been examined and that the next date before the learned trial court had been fixed on June 10, 2021.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

It appears that there are total 44 witnesses and out of which only 13 witnesses have been examined and, as such, there is no possibility of conclusion of the trial in the near future. 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 more than three years and there is no possibility towards early conclusion of the trial. Article 21 of the Constitution creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice. In the present pandemic situation and rapid proliferation of the virus, bail prayer needs to be considered liberally [See the order passed by the Hon'ble Supreme Court in *Re: Contagion of Covid-19 Virus in prisons* and the judgment delivered in the case of *Shaheen Welfare Association -Vs- Union of India and Others*, reported in (1996) 2 SCC 616].

In the said conspectus and considering the nature of allegations and the period of detention, we are of the opinion that further detention of the petitioner is not warranted in the facts and circumstances of the case.

Accordingly, we direct that the petitioner, namely, **Nasir Mallick**, shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Serampore, Hooghly.

The petitioner is also directed to attend the trial court on the dates specified for hearing.

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

The application for bail, being CRM No. 11261 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.

(Shampa Sarkar, J.)

(Tapabrata Chakraborty, J.)