

IN THE CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTON

Present:- The Hon'ble Justice Md. Nizamuddin

C.R.M. No. 185 of 2021

Md. Samiul Islam Saon

V

The State of West Bengal

For the petitioners : Mr. Soumajit Das Mahapatra, Adv.
Mr. Tanmoy Khan, Adv.

For the State : Mr. Nilay Chakraborty, Adv.
Mr. Biswarup Roy, Adv.

Heard on : 02.02.2021, 03.02.2021, 05.02.2021

Judgment on : 09.02.2021

Md. Nizamuddin, J.:- This is an application for bail under Section 439 of the Code of Criminal Procedure. It is the case of the accused/petitioner that he is a Bangladeshi Citizen and is a businessman and Managing Director of a company in Bangladesh and had entered into India for business purpose with a valid visa and was arrested in connection with G.R. Case No. 348 of 2019 under Haldibari Police Station, Case No. 144 of 2014 dated 27.07.2019 on the charge of recovery of

alleged highly valuable rarest metallic coin from the possession of the accused/petitioner.

Learned Advocate for the petitioner has annexed to the application several earlier orders passed by this Court not granting bail to the accused/petitioner which I have considered and one of such orders is the order dated 24.06.2020 from where it appears that the State- Respondent has opposed the bail application of the petitioner on the ground that accused/petitioner is a Bangladeshi National and that it wants to file supplementary charge-sheet.

Main contention of the learned Advocate for the petitioner in support of this application for bail is that without trial he is in custody for a period of more than 557 Days which is more than the half of the maximum period of punishment for the alleged offence under Section 411 and punishment for such offence is 3 years under Section 414 of the Indian Penal Code.

Learned Advocate for the petitioner in support of his contention relies on the Notification No. V-17013/24/2013-PR dated 27th September, 2014 issued by Government of India, Ministry of Home Affairs (CS Division), particularly Para 2 of the said notification is as under:

"2. The Supreme Court has also been seized of this issue and being concerned has in Bhim Singh vs. UoI and Ors. in W.P. (Crl.) No. 310/2005 on 7th September, 2014 issued the following directions:

“We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purpose of effective implementation of 436A of the Code of Criminal Procedure. In its sitting in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436A pass an appropriate order in jail itself for release of such under – trial prisoners who fulfill the requirement of Section 436A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court and at the end of the two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay.”

To facilitate the compliance of the above order, we direct the jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will

communicate the copy of the order to all Sessions Judges within his State for the necessary compliance.”

Learned Advocate for the petitioner submits that though charge-sheet has been submitted in this case on 29th September, 2019, but till date no charge has been framed and no trial has been commenced and the accused/petitioner is languishing in jail for more than 557 days without trial. He also submits that another co-accused one Md. Rajib who is an Indian National has already been enlarged on bail and petitioner herein could not be discriminated on the ground of being a Bangladeshi National.

Learned Advocate for the petitioner also wants this Court to take into consideration Section 436 A of the Criminal Procedure Code in support of his application for bail which is hereunder:

“436A:- Maximum period for which an under-trial prisoner can be detained. – Where a person has, during the period of investigation, inquiry of trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under the law.'

Learned Advocate for the petitioner also relies on the following judgments in support of his contention and on the proposition of scope of Section 436 A of the Criminal Procedure Code which is hereunder:

(I) (2017) 5 SCC 702 (Hussain and Anr. vs. Union of India).

(II)(2014) 3 High Court Cases (Cal) 366 (Swapna Akter alias Swapna Aktar vs. State of West Bengal).

(III) (2015) 13 SCC 605 (Bhim Singh vs. Union of India and Ors.)

Learned Advocate for the petitioner submits that there is extradition treaty between India and Bangladesh and the Indian Government is under obligation to extradite the petitioner.

Learned Advocate appearing for the State produced the relevant record and submitted that a supplementary charge-sheet has already been filed in the case on 8th January, 2021 and has tried to explain the delay in filing the supplementary charge-sheet. He also opposes the bail on the ground that the accused/petitioner is a Bangladeshi National and has committed the offence under Section 411 of the Indian Penal Code and the article which is very precious rarest valuable metal in question was recovered from the possession of the accused/petitioner and submits that this is not a fit case for granting bail, however, direction may be passed to expedite and conclude the trial within 2 months but has no answered on the aforesaid notification dated 27th September, 2014 and decision of the Apex Court in the case of Bhim Singh (supra) and application of Section 436A of the Criminal Procedure Code which is applicable in the case of the accused/petitioner as submitted by the learned Advocate for the accused/petitioner.

I have considered Section 436A of the Criminal Procedure Code and the aforesaid notification dated 27th September, 2014 and considered the guideline laid down by the Apex Court in the case of Bhim Singh (supra) which is relevant to the facts and issues involved in the present case.

The case of Swapna Aktar (supra) is distinguishable from the facts of the present case since in the said case though the accused was a foreign national, i.e., Bangladeshi but it was a case of over-staying beyond the period granted under visa due to some technical ground and in that case there was exchange of correspondence between the Bangladeshi Government and the Indian Government but in the present case the accused/petitioner has annexed only the document written by Deputy High Commission of Bangladesh to the Ministry of External Affairs, Government of India but no document of response, if any, by the Government of India has been annexed to the petition.

The judgment of the Hon'ble Supreme Court in the case of Bhim Singh (supra) lay down the guidelines and direction to the Jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge for implementing Section 436A of the Criminal Procedure Code which were not taken into consideration in the case of the accused/petitioner as appears from record.

The judgment of the Hon'ble Supreme Court in the case of Hussain & Anr. (supra) lays down the guideline and timeline for speedy trial by all the Courts below, in cases of under-trial prisoners who fall within the ambit of Section 436A of the Criminal Procedure Code.

In view of the discussion made above, I direct the learned Additional Judicial Magistrate, Mekhailganj, Coochbehar, to expedite and conclude the trial of the petitioner positively within 10th April, 2021, in view of the fact that the accused/petitioner who is an under-trial prisoner has already suffered detention for more than 50 per cent of the maximum period of punishment if at all to be imposed if found guilty and also the fact that the validity of the visa of the accused/petitioner is going to expire on 19th June, 2021 as appears from record. In case of failure on the part of the learned Magistrate concerned, to conclude the trial within the time stipulated herein, petitioner will be entitled to bail subject to terms and conditions imposed and satisfaction of the learned Magistrate concerned.

At the same time learned Magistrate concerned is also directed to take necessary and effective steps in the case of the accused/petitioner towards effective implementation of the aforesaid notification dated 27th September, 2014, issued by the Government of India, Ministry of Home Affairs and the decisions of the Hon'ble Supreme Court referred above relating to Section 436A of the Criminal Procedure Code within 4 weeks from the date of communication of this order to him and communicate such steps taken by him in this regard to the Learned Registrar of Circuit Bench of Calcutta High Court at Jalpaiguri Bench

within one week thereafter. Learned Registrar of this Court is to communicate this order to the learned Additional Chief Judicial Magistrate, Mekhailganj, Coochbehar, immediately.

This application for bail is, accordingly, disposed of.

(Md. Nizamuddin, J.)