

28.01.2022

Sl. No. 05.

Mithun

Ct.No.42.

CRM(SB)/14/2022

(Via Video Conference)

In re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with ACGR Case No.3097 of 2018, arising out of Anandapur Police Station Case No. 182 of 2018 dated 20.06.2018 under Sections 120B/419/420/468/471 of the Indian Penal Code read with Sections 66C/66D/84B of Information Technology Act, 2000.

In the matter of : **M.George Irabor & Ors.**

...Petitioners.

Mr. Moyukh Mukherjee, Adv.
Mr. Francis Samson Correa, Adv.,
Ms, Kiran Kumari Mahato, Adv.
Mr. Sarthak Mondal, Adv.
Mr. Koustav Lal Mukherjee, Adv.

...for the Petitioners.

Mr. Ranabir Roy Chowdhury, Adv.
Mr. Mainak Gupta, Adv.

...for the State.

The petitioners are Nigerian Nationals. Anandapur Police Station Case No.182 of 2018 was registered against them under Sections 120B/419/420/468/471 of the Indian Penal Code read with Sections 66C/66D and 84B of the Information Technology Act and Section 14 of the Foreigners Act against the petitioners.

It is submitted by Mr.Mukherjee, learned Advocate for the petitioners that the petitioner No.1 was arrested on 13th August, 2018 and the petitioner Nos.2 & 3 were arrested on 18th August, 2018. They are in custody for about 3 and ½ years. The

highest punishment that may be awarded to the petitioners is that of imprisonment for a term of 7 years. Since they have already under detention for about 3 and ½ years, they may be released on bail. In support of his contention, Mr. Mukherjee refers to the provision of Section 436A of the Code of Criminal Procedure an unreported decision of the Division Bench of this Court passed in CRM No.9314 of 2020 (In re: Sanawar Ali). Placing reliance on the above- referred unreported decision, it is specifically submitted by Mr. Mukherjee that charge was framed against the accused persons in the month of December, 2018. Till date out of 7 witnesses, only one witness has been examined. Delay in trial of a criminal case cannot be equated with the alleged negligence or inaction on the part of the accused persons because the State has the duty to dispose of a criminal case at the earliest in order to protect the life and liberty of both the accused persons and the informant enshrine under Article 21 of the Constitution.

Mr. Ranabir Roy Chowdhury, learned Advocate for the State, on the other hand, submits that there is no denial of the fact that delay was caused in concluding the trial of the case. However, for such delay, the petitioners cannot be enlarged on bail on the ground that they are Foreign Nationals. They do not have any property in the territory of India. If they are granted bail, it would be difficult for the prosecution to produce them in trial in future. He further submits that if the prosecution gets six months time, the trial of the case shall be concluded.

It is also submitted by Mr. Roy Chowdhury that the delay was also contributed by one of the accused who is on bail.

It is not undisputed that the petitioners are Foreign Nationals. They are in the territory of India without any valid Passport or Visa. Now they are under the custody of the State. As soon as they are enlarge on bail and come out of the custody of the State, automatically offence under Section 14 of the Foreigners Act will be committed by them. Considering such aspect of the matter, this Court is not inclined to release the petitioners on bail. Prayer for bail is, thus, rejected.

The prosecution is directed to complete the trial of the case by 15th June, 2022.

It is also directed that the accused persons shall also cooperate with the learned Trial Court in the matter of conclusion of trial.

Learned Trial Court is at liberty to take appropriate action if the accused on bail does not cooperate with the Trial Court in course of trial of the case.

Let the plain copy of this order be sent to the learned Court below forthwith.

(Bibek Chaudhuri, J.)