

CRM (DB) 875 of 2022

05.04.2022
Sl. 44
Court No.29
(sourav)
(Allowed)

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **Posta** Police Station Case No. **56** of **2011** dated **28.02.2011** under Sections **302/394** of the Indian Penal Code.

And

In the matter of: **Sanatan Dolai @ Fokla**

....petitioner.

Mr. Dipanjan Dutt,
Mr. Ayan Chakraborty,

...for the petitioner.

Mr. Saibal Bapuli, Ld. APP,
Mr. Bibaswan Bhattacharya,

... for the State.

Petitioner seeks bail.

Learned advocate appearing for the petitioner submits that the petitioner is in custody in excess of 11 years. Out of 43 prosecution witnesses, 33 were examined. He submits that 38 dates of trial were adjourned simply on the reason of absence of witnesses. In addition thereto, adjournments were sought for on behalf of the prosecution on at least 10 days. The unavailability of the Presiding Officer contributed for 20 days of adjournment. On other dates, the trial was adjourned either because of the combined reasons of unavailability of the Presiding Officer and the witnesses or on some other pretext. The COVID lockdown contributed for one day adjournment.

Learned advocate appearing for the State submits that the next date of trial is fixed on April 26, 2022. Another six months time may be peremptorily fixed for the purpose of the disposal of the trial.

The proceedings are pending in excess of 11 years. Out of 43 prosecution witnesses only 33 were examined. The petitioner is in custody in excess of 11 years. There is hardly any possibility of the trial concluding any time soon. The prosecution did not invite the Court to invoke the provisions of Section 309 of the Criminal

Procedure Code for an expeditious disposal of the trial.

In such circumstances, considering the period of detention of the petitioner and considering the indolence of the prosecution in conducting the trial, we are of the view that the petitioner is able to make out a case under Article 21 of the Constitution of India.

Consequently, in the facts of the present case, we deem it appropriate to enlarge the petitioner on bail.

Accordingly, the petitioner 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 Chief Metropolitan Magistrate, Kolkata, subject to the condition that during bail he shall appear before the learned trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

The application for bail being **CRM (DB) 875 of 2022** is, thus, disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

