

CRM 2555 of 2021
(via video conference)

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

And

In Re : Khurram Khan @ Md. Ahtasham

.....Petitioner

Mr. Milon Mukherjee, Ld. Sr. Adv.
Mr. Biswajit Manna

.....for the Petitioner

Mr. Saswata Gopal Mukherji, Ld. PP
Mr. Madhusudan Sur, Ld. APP
Mr. Dipankar Paramanick

.....for the State

Mr. Ayan Bhattacharya
Ms. Priyanka Tibrewal
Md. Danish Taslim

.....for the *de facto* complainant

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Titagarh P.S. Case No. 548/2020 dated 05.10.2020 under Sections 302/120B/34/212/201 of the Indian Penal Code read with Sections 25/27 of the Arms Act.

Mr. Milon Mukherjee, learned senior advocate appearing for the petitioner submits that the petitioner has been roped in on the basis of mere suspicion. He has already suffered long incarceration since 5th October, 2020. Upon completion of investigation, charge sheet has also been submitted and as such, he may be enlarged on bail on any stringent condition.

Mr. Saswata Gopal Mukherji, learned Public Prosecutor appearing for the State opposes the petitioner's prayer and submits that the petitioner had telephonic conversation with other co-

accused persons and as such, his involvement in the entire racket cannot be totally ruled out. In support of such contention, he has drawn our attention to several documents in the case diary.

Mr. Bhattacharya, learned advocate appearing for the *de facto* complainant submits that initially the said complainant's prayer for further investigation was turned down by the learned Court below. Challenging the said order, a revision application was preferred before this Court. By an order dated 17th November, 2021, the impugned order was set aside. Thereafter, the *de facto* complainant has preferred a fresh application for further investigation and the same is pending before the learned Court below. The petitioner has direct nexus with the offence and in view thereof, he is not entitled to the relief, as prayed for, in the present application.

In reply, drawing our attention to the application for further investigation submitted by the *de facto* complainant, Mr. Milon Mukherjee submits that in the same it had been, *inter alia*, stated by the *de facto* complainant that his knowledge about the petitioner and other miscreants was hearsay. On a plea that an application for further investigation is pending consideration, the petitioner cannot be deprived of his liberty moreso when it would be evident that he is not the principal accused.

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

The alleged telephonic conversation of the petitioner with other co-accused persons, would not justify a *prima facie* case of criminal conspiracy. Considering the nature of accusations and the possible extent of complicity of the petitioner in the alleged offence, we are of the opinion that further detention of the petitioner, who has already

suffered incarceration for a period of more than 485 days, is not warranted, moreso when upon completion of investigation charge sheet has been submitted. As such, the petitioner may be enlarged on bail. However, his movement needs to be restricted.

Accordingly, we allow this application and direct that the petitioner, namely, **Khurram Khan @ Md. Ahtasham**, 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 a local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas with further direction that the petitioner shall not leave the jurisdiction of Titagarh Police Station without the permission of the Officer-in-Charge of Titagarh Police Station save and except for attending the learned Court below on all the dates, as specified for hearing.

He shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 2555 of 2021, is disposed of.

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

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)