

04.07.2022

Sl. No.6
[ALLOWED]

&

Sl. No.7
[Rejected]

akd/PA

C. R. M. (DB) 819 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 16.03.2022 in connection with Sessions Trial Case No.14 (08)/2011 (R. No.214/2015) in connection with FIR No. RC 3(S)/2011-KOL.

And

In Re: ***Pintu Roy & Anr.***

... .. Petitioners

W I T H

C. R. M. (DB) 956 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 04.04.2022 in connection with FIR No. RC 3(S)/2011 dated 21.02.2011 under Sections 120B/148/149/326/307/302/374 of the Indian Penal Code and Sections 25/27 of the Arms Act.

And

In Re: ***Rathin Dandapat***

... .. Petitioner

Mr. Nirmalya Dhara

Mr. Ranadeb Sengupta

... for the petitioners [in CRM (DB) 819/2022]

Mr. Syed Shahid Imam

Mr. Sakya Maity

... for the petitioner [in CRM (DB) 956/2022]

Mr. Kallol Mondal

... for the CBI [in both applications]

It is submitted on behalf of the petitioners in CRM (DB) 819 of 2022 that they are in custody for more than eleven years. It is further submitted there is inordinate delay in conducting trial. It is also submitted none of the witnesses examined so far including PWs.4 & 5 have identified the petitioners during trial.

It is submitted on behalf of the petitioner in CRM (DB) 956 of 2022 that he is in custody for eight years and four months and there is little possibility of trial concluding in near future. Only 26 out of 115 witnesses have been examined till date.

Learned advocate appearing for the Central Bureau of Investigation submits the instant case involves murder of nine persons in a village. Conspiracy was hatched in the house of Rathin Dandapat (*petitioner in CRM (DB) 956 of 2022*). Most of the witnesses have identified him as the kingpin who organised the gruesome attack resulting in the death of nine persons.

He further submits petitioners in CRM (DB) 819 of 2022 are hired mercenaries who along with others fired at the victims resulting in their death. They have been identified by PWs.4 & 5 during Test Identification Parade. Prayer has been made to recall PWs.4 & 5 for their identification in court. Delay in trial is due to various reasons including stay orders passed by this court between 14.11.2011 to 16.08.2012 in CRR 3466 of 2011 and CRR 3700 of 2011 and by the Apex Court between 22.01.2014 to 18.12.2017 in SLP (Crl.) No.5699 of 2014. Other systemic delays like vacancy in court and pandemic conditions also contributed to the delay. It is also submitted prayer for bail of co-accused Fullara Mondal was turned down by a co-ordinate Bench of this Court in CRM 1221 of 2021 on 14.03.2022.

Profile of the instant case discloses a heinous murder of nine persons including two women. 28 persons were also injured. Petitioners, however, have prayed for bail essentially on the ground of inordinate delay in trial.

Petitioners in CRM (DB) 819 of 2022 are languishing in jail for eleven years. Although 26 witnesses including PWs.4 & 5 were

examined, no legally admissible evidence has been adduced against them till date. None of the witnesses identified them during deposition.

Learned advocate appearing for the Central Bureau of Investigation strenuously argued two of the witnesses viz. PWs.4 & 5 have identified the petitioners as the outsiders who shot at the victim in course of Test Identification Parade. He further submits prayer has been made to recall the said witnesses.

It is trite law identification of an accused in course of Test Identification Parade is not substantive evidence. It can only be used for corroborating the identification of the accused in court. Admittedly, none of the witnesses including PWs.4 & 5 have identified the petitioners in course of trial. Notwithstanding such fact, PWs.4 & 5 were not declared hostile. We would not ordinarily assess evidence led in a case pending trial. However, in the peculiar facts of the case where petitioners are languishing in jail for more than a decade, we are constrained to do so to satisfy our conscience whether continuation of their undertrial incarceration is justified. We note the most vital witnesses so far as they relate to the petitioners, that is, P.Ws. 4 and 5 have not supported the case and the prosecution evidence against them is most scanty and uninspiring. No doubt, belatedly, a prayer for recall of such witnesses has been made which is pending consideration before the trial court but it is contended the same is a desperate effort to fill up the lacunae in the prosecution case.

We do not wish to express any opinion on the merits of such plea which is pending consideration before the trial court. However, the present state of affairs show the petitioners in CRM (DB) 819 of 2022 are languishing in jail for more than a decade although prosecution has not been able to lead any legally admissible evidence with regard to their involvement in the crime.

It is strenuously argued delay was due to factors beyond the control of the prosecution. Perusal of the chronology of events show charge-sheet was filed in 2011. Even if one discounts the periods for which proceeding were stayed by this court as well as the Apex Court, prosecution appears to have taken about seven years to examine only 26 out of 115 witnesses. Progress in trial is, therefore, extremely slow.

While adjudicating a plea for grant of bail the court must be mindful not only of the heinousness of the offence and the evidence led against the accused persons but also take into account the fundamental right to speedy trial of an accused who is incarcerated. These factors are relative to one another and require to be balanced to arrive at a just and fair conclusion with regard to denial of liberty of an undertrial. While gravity and the heinousness of the offence would be a relevant consideration, we must also be mindful of the presumption of innocence while adjudicating a plea of bail particularly when evidence led against the accused appears to be scanty.

This court has made an endeavour to balance the various factors relating to the crime as well as the criminal and the processual delay infracting the right to speedy justice of an undertrial. We note the extent of complicity of the petitioners in CRM (DB) 819 of 2022 in the crime in view of the fact none of the prosecution witnesses have identified them during trial till date and the protracted period of undertrial detention suffered by them extending for more than a decade with bleak possibility of the trial concluding in near future. Petitioners do not stand on the same footing with Fullara Mondal whose bail prayer was turned down by a co-ordinate Bench of this Court. Fullara had absconded for about four years and at least seven out of twenty six witnesses had described her involvement in the crime. Under such circumstances, we hold further detention of the petitioners would amount to breach of their

fundamental right under Article 21 of the Constitution of India and they are entitled to bail. Hence, we direct petitioners in CRM (DB) 819 of 2022 to be released on bail however, subject to strict conditions.

Therefore, the accused/petitioners, namely **(1) Pintu Roy & (2) Gandib Ban Roy**, be released on bail upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Paschim Medinipur subject to condition that the said petitioners shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioners, while on bail, shall not leave the jurisdiction of the district of Paschim Medinipur except for the purpose of investigation and/or for attending court proceedings and shall report to the Officer-in-charge, Goaltore Police station once in a week until further orders.

In the event they fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail automatically without reference to this court.

With regard to the petitioner in CRM (DB) 956 of 2022 we are, however, inclined to take a different view.

As discussed earlier, neither the right of the prosecution to oppose the prayer for bail on the anvil of heinousness of crime nor the right of an accused to seek bail on the ground of inordinate delay are absolute propositions. These competing issues require to be balanced *inter se* to arrive at a just and fair decision with regard to deprivation of liberty pending trial. We note petitioner in CRM (DB) 956 of 2022 is the kingpin of the entire conspiracy to commit the murder of nine persons and injury to others. Petitioner had harboured the co-accuseds at his

residence and pursuant to the conspiracy they had fired resulting in mayhem and death.

We have gone through the evidence led by the prosecution witnesses. Unlike petitioners in CRM (DB) 819 of 2022 who have neither been named nor identified by witnesses, most of the prosecution witnesses have named petitioner in CRM (DB) 956 of 2022 as the principal player in the crime. Witnesses stated co-accuseds assembled at the residence of the petitioners and pursuant to the conspiracy proceeded to shoot at the victims resulting in their deaths. Hence, ample evidence has come on record with regard to his role in the murder of nine victims. Overwhelming legally admissible material connecting the petitioner with the heinous crime of murder of nine persons outweigh his plea for release on bail on the ground of delay in conducting trial. Keeping in view the principal role of the petitioner in CRM (DB) 956 of 2022 in the alleged crime and the incriminating evidence adduced against him, we are not inclined to enlarge him on bail at present.

Hence, prayer for bail of the petitioner viz. ***Rathin Dandapat*** is rejected.

However, in the light of the protracted period of detention suffered by the petitioner, we direct the trial court to take prompt steps to conduct the trial on a day to day basis and conclude the same at an early date without granting unnecessary adjournments to either of the parties.

Observations made by us in this order are tentative in nature and made for the purpose of disposal of the bail applications and would not have bearing on the trial which needless to mention shall be decided independently and in accordance with law.

The applications for bail being CRM (DB) 819 of 2022 and CRM (DB) 956 of 2022 are disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)