

09.06.2022
cm/ct 28
sl no. 26

C.R.M. (DB) No. 1321 of 2022

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with **Binpur P.S Case No. 12 of 2010** dated **15.02.2010** under Sections **121/121A/122/124A** read with Section **120B** of the Indian Penal Code under Sections **20/16(1)(a)/16(1)(b)/18/38/39** of the Unlawful Activities (Prevention) Act, 1967 and under Section **3 /4** of the Explosive Substances Act and under Section **25(1)(b)** of the Arms Act and Section **302** read with Section **120B** of the Indian Penal Code

And

Allowed

In Re : Asish Mahata

..... petitioner

Mr. Soumik Ganguli
Mr. Dilip Kr. Sadhu
Mr. S. Nandy

..... for the petitioner

Mr. Neguive Ahmed, Ld. A.P.P.
Ms. Ayantika Roy

..... for the State

Petitioner is in custody for more than 12 years. It is contended there is little possibility of trial concluding in the near future. Out of 70 witnesses, only 33 have been examined. It is also contended that the evidence against the petitioner is generic and does not inspire confidence. Under such circumstances, he prays for bail.

Mr. Ahmed, learned Additional Public Prosecutor appearing for the State strongly opposes the prayer for bail. He submits that petitioner is a member of a Maoist organization and along with others committed murder of 21 Eastern Rifle personnel. Role of the petitioner has transpired from the depositions of prosecution witnesses.

We have considered the materials on record including the evidence of prosecution witnesses. Some of the witnesses have

identified the petitioner. Incident is a very grave one and a large number of police personnel had died. However, gravity of the offence does not appear to have put the prosecution on a first mode. It has lingered for more than 12 years while the petitioner has languished in jail as an under-trial. Breach of his fundamental right to speedy trial is palpable in the facts of the case.

In **Union of India Vs. K.A. Najeeb**¹, the Apex Court while dealing with the statutory restriction to bail engrafted under Section 43 D (5) of the UAPA Act, inter alia, held as follows:

“ It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonized. Whereas a commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigorous of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

¹ (2021) 3 SCC 713

The ratio of the aforesaid case applies with full force to the facts of the present one. We are conscious of the gravity of the offence and the fact that some evidence has been led against the petitioner. But petitioner has already suffered detention for more than 12 years. There is little possibility of the trial concluding in near future as the prosecution proposes to examine another 35 witnesses.

In view of the aforesaid facts, balancing the gravity of the offence one hand against the right to speedy trial of an under-trial on the other hand, we are of the opinion further detention of the petitioner cannot be countenanced in the face of Article 21 of the Constitution, and he is entitled to bail subject to strict conditions.

Accordingly, the petitioner be released on bail upon furnishing a bond of Rs.50,000/- with two sureties of like amount, one of whom must be local, to the satisfaction of the learned CJM, Paschim Medinipore, on condition while on bail petitioner shall remain within the jurisdiction of Salboni police station and shall report to officer-in-charge Salboni police station once in a week. He shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

We have taken to judicial notice of the inordinate delay in conducting trial of such a serious case involving murder of 21

police personnel. While the family members of the deceased police personnel await eagerly the just conclusion of the trial and punishment of the offenders, the accused persons are perennially languishing in jail as under-trials. Prosecuting agency has singularly failed to discharge its constitutional duty to conduct fair and prompt prosecution and upheld in the rule of law in such an important case.

Under such circumstances, we direct the trial court to take appropriate steps to take the trial to its logical conclusion at the earliest and bring the real offenders to book which would give succour to the family members of the unfortunate victims.

Copy of this order be communicated to the trial court for necessary compliance.

The application being CRM(DB) No.1321 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)