

14.09.2022
Sl. No.5
akd
[ALLOWED]

C. R. M. (DB) 2141 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 30.06.2022 in connection with Raghunathganj Police Station Case No.229 of 2008 dated 29.07.2008 under Sections 489B/489C/120B/121/121(A)/122/124/212 of the Indian Penal Code and charge-sheet submitted under Sections 489B/489C/120B/286/212 of the Indian Penal Code and Sections 13/14 of the Foreigners Act. (G.R. Case No.657 of 2008)

And

In Re: ***Md. Mostak @ Md. Mustak @ Md. Mustaque***

... .. Petitioner

Mr. Soumik Ganguly
Mr. Tapodip Gupta

... .. for the petitioner

Ms. Anasuya Sinha
Mr. Pinak Kr. Mitra
Ms. Jonaki Saha

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for more than fourteen years. It is further submitted there is inordinate delay in the trial of the case.

Learned advocate appearing for the State submits trial is at its fagend and fixed for delivery of judgment. At that juncture, the presiding officer of the court was transferred.

Under such circumstances, we called for a report from the Registrar (Judicial Service) with regard to the possibility of filling up of the vacancy.

Report is placed before us. Relevant portion of the report reads as follows :-

“Under the stated premises, it is humbly submitted that till completion of the process of filling up of vacancies for the year 2022, which is at present in very initial stage, the 2nd Court of Additional District & Sessions Judge, Jangipur, is likely to remain vacant, if, not in the meantime, the said Court is filled up by the Transfer Committee of the Hon'ble Court by way of transfer of judicial officers.”

From the said report we find possibility of filling up of the vacancy in the trial court in near future is unlikely.

We have considered the materials on record. Evidence on record shows recovery of seven pieces of counterfeit currency notes and leaflets containing anti Indian slogans were recovered. Whether the aforesaid materials would satisfy the ingredients of the offence of waging war may be assessed in the course of trial. However, it is undeniable that the petitioner has suffered undertrial detention for more than 14 years. A balance must be struck between gravity of the offence and preservation of public order on one hand and the right to speedy trial of an undertrial on the other hand. Nothing is placed on record to show that delay has been engineered at the end of the petitioner. In view of the aforesaid facts and balancing the two competing legal requirements, we are of the opinion detention of the petitioner would amount to breach of his fundamental right to speedy justice. We are prompted to come to such a conclusion in view of the observations of the Apex Court in ***Union of India vs. K. A. Najeeb***¹. In the light of the aforesaid discussion, we are of the opinion further detention of the accused/petitioner is not necessary and he may be enlarged on bail however, subject to strict conditions.

Therefore, the accused/petitioner, namely ***Md. Mostak @ Md. Mustak @ Md. Mustaque***, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not

¹ (2021) 3 SCC 713

intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner, while on bail, shall not leave the jurisdiction of Raghunathganj Police Station except for the purpose of investigation and/or for attending court proceedings and shall report to the Officer-in-charge of the said police station once in a week until further orders.

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.

The application for bail, thus, stands **allowed**.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)