

CRM No.6647 of 2021

Via video conference

02.02.22

(S.R.)

Sl.267

Ct.32

In re: An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Mahishadal Police Station Case No.13 of 2020 dated 13/01/2020 under Sections 302/201/34 of the Indian Penal Code (G.R. Case No.61 of 2020;

And

In re: Mallika Das Samanta @ Mallika Das (Samanta)

... petitioner.

Mr. Subhabrata Chowdhury

Miss. Tripti Pandey

Mr. Biswajit Goswami

... for the petitioner.

Mr. Swapan Banerjee

Mr. Suman De

...for the State.

Mr. Chowdhury, learned advocate appearing for the petitioner submits that the entire case is based on circumstantial evidence. The principal accused, namely, Brajagopal Seni and another accused, namely, Tapati Das have already been enlarged on bail by two different Coordinate Benches of this Court. Upon completion of investigation charge sheet has been submitted on 15th April, 2020 but till date charges have not been framed. However, there are 30 witnesses and as such, there is no possibility towards conclusion of the trial in the near future and the petitioner had already suffered incarceration for more than 600 days. He further submits that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed by Article 21 of the Constitution of India and in the said conspectus, further detention of the petitioner is not warranted.

Mr. De, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to several documents in the case diary including the statements of the witnesses, as recorded

under Section 161 and the seizure list. He further submits that the delay, which has occasioned towards framing of charges is not totally attributable to the State. Furthermore, such delay stands intervened by a period lost due to the pandemic.

Heard the learned advocates and considered the materials in the case diary.

From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay, which has occasioned. She is languishing in custody for more than 600 days and there is no possibility towards early conclusion of the trial. The petitioner is a woman and, *prima facie*, it also does not appear that she would flee from justice or delay the trial by abscondence.

Upon assessment of the materials on record it, *prima facie*, appears that the extent of complicity of the petitioner is similar to that of Brajagopal Seni, who had already been enlarged on bail.

In several cases, the Hon'ble Supreme Court has granted bail owing to the long period of incarceration and the unlikelihood of the trial being completed any time in the near future. The exposition of Article 21 in the case of *Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna*, reported in (1980) 1 SCC 81 was exhaustively considered afresh in the case of *Abdul Rehman Antulay and Ors. Vs. R.S.Nayak and Anr.*, reported in (1992) 1 SCC 225 and it was *inter alia* observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice.

Applying such proposition of law to the facts of the present

case, we are of the opinion that further detention of the petitioner, who is in custody for more than 600 days is not warranted.

Accordingly, we direct that the petitioner shall 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 concerned learned Chief Judicial Magistrate and/or learned Additional Chief Judicial Magistrate, Purba Medinipur with a further condition that the petitioner shall attend the learned trial court on all the dates specified for hearing.

It is further directed that the petitioner 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 her bail without any further reference to this Court.

The application for bail being CRM No.6647 of 2021 is, accordingly, 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.)