

CRM No.7157 of 2021

Via video conference

02.02.22

(S.R.)

Sl.27

Ct.32

In re: An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with **Ranaghat** Police Station Case No.302 of 2017 dated 05/08/2017 under Section 302 of the Indian Penal Code;

And

In re: Abodh Biswas

... petitioner.

Mr. Soubhik Mitter

Mr. L. Maitra

Mr. Kalyan Kumar Bhattacharjee

Ms. Rajnandini Das

... for the petitioner.

Mr. Prasun Datta, APP

Mr. Subrato Roy

...for the State.

Mr. Mitter, learned advocate appearing for the petitioner submits that on the fateful day the petitioner himself took his parents to the hospital and in the incident he also suffered injuries. Unfortunately, his parents expired. He is the youngest son of his parents and taking advantage of such unfortunate incident his elder brother had falsely implicated him with an intent to deprive him of his parental property. The petitioner's eldest brother is mentally unfit.

He further submits that the petitioner's application for bail was last refused by a Coordinate Bench of this Court on 19th October, 2020 with an observation that the trial should positively be concluded by 31st January, 2021, even on a day to day basis. The said order was within the knowledge of the learned court below, as would be explicit from the last order passed on 3rd September, 2021 by the learned Additional District and Sessions Judge. However, there had been no endeavour on the part of the learned Court below to comply with the directions contained in the order dated 19th October, 2020 and there had been no substantial progress in the trial thereafter. As a

consequence thereof, the petitioner is languishing in custody since the year 2017 for more than five and half years and there is also no possibility towards conclusion of the trial in the near future.

According to Mr. Mitter, 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.

Mr. Roy, learned advocate appearing for the State, however, opposes the petitioner's prayer and files a report, as called for earlier by this Court. Let the same be kept on record.

From the said report, it appears that subsequent to 19th October, 2020 only two dates were fixed on 25th July, 2021 and 4th December, 2021. Mr. Roy, however, submits that the delay, which has occurred towards conclusion of the trial is not totally attributable to the State. Furthermore, a part of such delay stands intervened by a period lost due to the pandemics.

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

The petitioner has no antecedent and *prima facie*, it does not appear that his liberty would prove to be a menace to the society. Most of the witnesses have been examined and as such there is no possibility of influencing any witness. From the sequence of facts, it appears that the petitioner cannot be totally held responsible of the delay, which has occasioned. He is languishing in custody for more than five and half years and in view of the prevailing pandemic situation and rapid proliferation of the virus it is uncertain as to whether the trial can be completed in the near future.

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 five and half years is not warranted and he may be enlarged on bail. However, his movement needs to be restricted.

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 Additional Chief Judicial Magistrate, Ranaghat with a further condition that the petitioner shall not leave the jurisdiction of the learned Sessions Court without the permission of the said Court.

It is further directed that the petitioner shall not intimidate the witnesses or tamper with evidence in any manner whatsoever and shall attend the learned trial court on all the dates specified for hearing.

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.

The application for bail being CRM No.7157 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.)