

CRM 7187 of 2021
(via video conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure ;

And

In Re : Safikul Islam @ Sentu & Anr.

.....Petitioners

Mr. Arindam Roy

.....for the Petitioners

Ms. Sujata Das

.....for the State

Mr. Sabir Ahmed

Mr. Jeeshan Ahmed

.....for the *de facto* complainant

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioners in connection with Raghunathganj P.S. Case No. 415 of 2017 dated 12.06.2017 under Sections 341/325/326/307/302/34 of the Indian Penal Code.

Mr. Roy, learned advocate appearing for the petitioners submits that the petitioners are languishing in custody for more than four years and seven months. Out of 24 witnesses, only two witnesses have been examined. As such, there is no possibility towards conclusion of the trial in the near future. He further submits that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed under Article 21 of the Constitution of India. In view thereof, the petitioners may be enlarged on bail on any stringent condition.

Ms. Das, learned advocate appearing for the State, however, opposes the petitioners' prayer and submits, upon instruction, that

the petitioners' prayer for bail was rejected earlier on four occasions. Let the documents, as produced, be kept on record. She further submits that the petitioners are directly involved in the alleged offence. The trial has already commenced and out of 24 witnesses, only two could be examined since, on repeated occasions, time was prayed for on behalf of the petitioners. The delay, as such, is not totally attributable to the State. Furthermore, the period of delay stands intervened by a period lost due to pandemic.

Mr. Ahmed, learned advocate assisted by Mr. Jeeshan Ahmed, learned advocate, appears on behalf of the *de facto* complainant and places before us an order passed by the learned Court below on 24th September, 2021. In the said order, it has, *inter alia*, been observed as follows: -

"On perusal of the case record, it appears that the Ld. PP-in-charge in compliance with the order of the Court has been producing the witness (PW 1) for her cross-examination on each and every date fixed by the Court. It further appears that on previous occasion also, the prosecution remained present with the witness for her cross-examination but the defence advocates did not take any step. Today also it is submitted on behalf of the accused persons that the Ld. Advocate appearing for the accused persons is sick and he is not in a position to come to the Court due to COVID – 19 pandemic and prayers for time."

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

Prima facie, there are strong incriminating materials on record against the petitioners. It further appears that the delay which has occurred is not totally attributable to the State. Adjournments were sought for on repeated occasions on behalf of the petitioners. Considering such conduct and the seriousness of the offence, we are not inclined to exercise any discretion in favour of the petitioners. As such, petitioners' prayer is refused at this stage.

The application CRM 7187 of 2021 is, accordingly, dismissed.

The learned Court below is, however, requested to take expeditious steps to conclude the trial as early as possible, without granting unnecessary adjournments to either of the parties.

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.)