

03.02.2022

30

Ct. No. 29
KAUSHIK
REJECTED

C.R.M. 7314 of 2021

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Hanskhali** Police Station Case No. **56** of **2019** dated **10.02.2019** under Section 302/120B/109/34 of the Indian Penal Code read with Sections 25(1)(a)/25(1B)(a)/27/28/29(a)(b) of the Arms Act.

And

In Re : Nirmal Ghosh

..... petitioner

Mr. Milon Mukherjee, Sr. Adv.
Mr. Rahul Ganguly

.....for the petitioner

Mr. Saswata Gopal Mukherjee, learned Public Prosecutor.
Mr. Neiguive Ahmed
Ms. Trina Mitra

....for the State

Status report filed in Court by the learned advocate appearing for the State be kept with the record.

Petitioner renews the prayer for bail.

Learned senior advocate appearing for the petitioner submits that, technically, this is the fourth application containing the prayer for bail of the petitioner. Two earlier applications were rejected by the Co-ordinate Benches. The last of the application for bail was 'not pressed' on behalf of the petitioner. He draws the attention of the Court to the period of detention of the petitioner. He submits that the petitioner is in custody for 1115 days. The petitioner is neither a Member of Parliament not a Member of the Legislative Assembly. The

charge-sheet was submitted on May 8, 2019. The prosecution filed a supplementary charge-sheet involving a Member of the Legislative Assembly. Such member is yet to appear. Therefore, although, the prosecution claims that one witness was examined, with the addition of another accused in the trial by virtue of the supplementary charge-sheet, it is likely that the trial needs to commence *de novo*. There is hardly any prospect of the trial concluding any time soon. He draws the attention of the Court to the various provisions of the Code of Criminal Procedure. He submits that at the very least, the Court should direct expeditious disposal of the trial given the period of detention of the petitioner. He also submits that, the present case is a result of a political rivalry and that the petitioner was falsely implicated.

Learned Public Prosecutor appearing for the State draws the attention of the Court to the contents in the case diary. He submits that, there are criminal antecedents so far as the petitioner is concerned. He draws the attention of the Court to the order of rejection of the prayer for bail of the petitioner on November 13, 2019. He submits that, thereafter there is hardly any change in circumstances warranting the Court to grant bail. He submits that whether or not the added co-accused will ask for *de novo* trial or examination of witnesses on behalf of the prosecution afresh remains in the realm of speculation. He opposes the prayer for grant of bail.

Apart from the period of detention, there is hardly any change in circumstances so far as the present case is concerned

subsequent to the earlier order of rejection of the bail on November 13, 2021. The petitioner is in custody in excess of 1100 days. The trial commenced. The prosecution is examining their witnesses. The first order of rejection of bail so far as the petitioner is concerned was on July 17, 2019 which directed conclusion of the trial as expeditiously as possible without granting unnecessary adjournment to either of the parties. The second order of rejection of bail was on November 13, 2019 which records a finding that considering the materials on record and keeping in mind the prima facie involvement of the petitioner in the alleged crime and taking into consideration the fact that the date for recording of evidence is fixed, it was not advisable to release the petitioner in bail at the crucial stage of the trial.

Next order so far as the prayer for bail of the petitioner is dated August 17, 2021 when the petitioner did not press such an application.

Judicial notice should be taken of the fact that there is an ongoing pandemic. Due to the ongoing pandemic, regular functioning of the Court stands impacted subsequent to at least March, 2020. Courts are endeavouring to resume its normal functioning and relate back to the pre-pandemic stage.

Taking into consideration the impact of the ongoing pandemic, it cannot be said that the prosecution suffered from inertia in proceeding with the trial. The delay of the conclusion of the trial cannot be kept at the door step of the prosecution

alone. However, the period of detention of the petitioner should also be taken into consideration.

In such circumstances, in our view, interest of justice would be subserved by requesting the Court in session of the trial to dispose of the trial as expeditiously as possible without granting any unnecessary adjournment to any of the parties.

We are of the view that there being hardly any material change in circumstances subsequent to the last order of rejection of bail being August 17, 2021 so far as the petitioner is concerned, we are unable to grant bail to the petitioner.

Accordingly, prayer for bail of the petitioner is rejected and the application being CRM 7314 of 2021 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)