

CRM 7906 of 2021
(via video conference)

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

And

In Re : Bispati Mondal @ Brihaspati Mandal

.....Petitioner

Mr. Debapriya Samanta

.....for the Petitioner

Mr. S. G. Mukherji, Ld. PP

Mr. Partha Pratim Das

Ms. Manasi Roy

.....for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Bhagwangola P.S. Case No. 16 of 2020 dated 12.01.2020 under Sections 498A/304B/302/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

Mr. Samanta, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated. On the fateful date, the petitioner and his wife were working in a brick-field. Accidentally, bricks fell over the victim's body and face. She was immediately taken to the hospital by the petitioner but she succumbed to the injuries. Upon completion of investigation, charge sheet was filed and the charges were framed on 22nd March, 2021. Subsequent thereto, the trial had not proceeded and the petitioner is languishing in custody for more than 608 days. There is also 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 and in the said conspectus, he may be enlarged on bail on any stringent condition.

Mr. Mukherji, learned Public Prosecutor appearing for the State, however, opposes the petitioner's prayer and submits that it would be explicit from the post mortem report that the petitioner's death was due to the effect of smothering. The petitioner is directly involved in the alleged offence. The delay in trial is not totally attributable to the State. Furthermore, the period of delay stands intervened by a period lost due to pandemics. In support of such contention, he has placed reliance upon a report. Let the said report be kept on record.

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

Records reveal that one co-accused person, namely, Nantu Mandal @ Gopal was granted bail on 12th March, 2020 and one Anjana Mandal was granted anticipatory bail on 13th March, 2020 by a co-ordinate Bench of this Court. One Sumitra Mandal, who had involvement in the alleged offence was also granted bail on 16th February, 2020 though primarily on the ground that she was a lady and was having a minor child.

The report, as placed before us, reveals that charges were framed on 22nd March, 2021. It appears that in view of the restricted functioning of the Court due to the pandemics, the matter was adjourned on 6th July, 2021. The schedule for evidence was

thereafter fixed on and from 2nd August, 2021 to 7th August, 2021 but the matter was again adjourned to 4th August, 2021. On the said date also the matter was adjourned. Thereafter, on 21st December, 2021, the accused was produced but the case was again adjourned to 25th January, 2022. On the said date no hearing was conducted since the learned Presiding Officer had been transferred in the midst thereof. It appears that the petitioner's earlier prayer for bail was rejected by a co-ordinate bench of this Court on 21st September, 2020 since at that juncture the case was not committed before the learned Sessions Court. Thereafter though the charges were framed way back on 22nd March, 2021 there had been no progress in the trial till date and the petitioner cannot be held responsible for the delay which has occasioned.

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 608 days, is not warranted.

Accordingly, we allow this application and direct that the petitioner, namely, **Bispati Mondal @ Brihaspati Mandal**, shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Chief Judicial Magistrate, Lalbagh, Murshidabad with a further condition that the petitioner shall not leave the jurisdiction of Bhagwangola Police Station until further orders save and except for attending the learned Court below.

The petitioner shall attend the learned Court below on all the dates, as specified for hearing and 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 his bail without any further reference to this Court.

With the aforesaid observations, the application for bail, being CRM No. 7906 of 2021, is 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.)