

14.03.2022
Court No.32
Item No. 08
Avijit Mitra

CRM 8497 of 2021

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

And

In Re : Sk. Moinuddin @ Sk. Mainuddin @ Raj

Petitioner

Mr. Ayan Bhattacharya,
Mr. Anand Keshri,
Mr. Sekhar Mukherjee,
Mr. Gaurav Kumar

For the Petitioner

Mr. Neguive Ahmed,
Ms. Trina Mitra

For the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Beniapukur Police Station Case No. 259 of 2016 dated 11.06.2016 under sections 307/34 of the Indian Penal Code read with Sections 25/27 of Arms Act and added Sections 302/34 of the Indian Penal Code.

Mr. Keshri, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody for more than 5 years 9 months and there is no possibility towards conclusion of the trial in the near future. His prayer for bail was last rejected on 28th April, 2020 and thereafter, there had been no substantial progress in the trial.

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, further detention of the petitioner is not warranted. In support of his contention he has placed reliance upon the judgement delivered in the case of ***Union of India vs. K.A. Najeeb*** reported in ***(2021) 1 SCC 713***.

Mr. Ahmed, learned advocate appearing for the State opposes the petitioner's prayer and submits that the petitioner's prayer was earlier rejected on four occasions. Trial has already commenced and 26 witnesses out of total 68 witnesses have already been examined and he further submits, upon instruction, that number of witnesses will also be scaled down. According to him, the delay which has occasioned is not totally attributable to the State. Furthermore, such delay stands intervened by a period lost due to the pandemic.

Pursuant to an earlier direction of this Court, Mr. Ahmed has placed before us a report as regards the stage of the proceedings. A perusal of the same reveals that by 28th February, 2020, 25 witnesses had been examined. Subsequent thereto, the pandemics intervened and the functioning of the Court was irregular and in view thereof, there was no substantial progress in trial. In the case of ***K.A. Najeeb (supra)***, it has been observed *inter alia* that once it is obvious 'a *timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge accused on bail*'.

In the instant case we find that the delay which has occurred is not totally attributable to the State. Upon commencement of

trial, 25 witnesses have already been examined. A period of time was lost due to the pandemics. There had been no substantial change in the circumstances subsequent to rejection of the petitioner's earlier prayer for bail on 28th April, 2020. In view thereof, his prayer for bail is refused at this stage.

Mr. Ahmed informs that the next schedule for examination of witnesses has been fixed during the period from 6th April, 2022 till 8th April, 2022.

In view thereof, we direct the learned Court below to expeditiously conduct the trial, without granting any unnecessary adjournment to either of the parties and, if necessary, upon resorting to the steps available under section 309 of the Code of Criminal Procedure so that logical conclusion of the case may be reached at the earliest preferably within a period of eight months from the date of communication of this order.

With the aforesaid observations, the application for bail, being CRM No. 8497 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)