

CRM 8499 of 2021
(via video conference)

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

And

In Re : Sushil Sharma

.....Petitioner

Mr. Angshuman Chakraborty

.....for the Petitioner

Mr. Neguive Ahmed, Ld. APP

Ms. Ayantika Roy

.....for the State

Ms. Sharon Maddmme Jacob

Mr. Rameshwar Sinha

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

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with Baguihati P.S. Case No. 15/2015 dated 9.1.2015 under Sections 363/366A/367/370/370A/371/372/373/376/109/120B of the Indian Penal Code and Sections 4/6 of the Protection of Children from Sexual Offences Act.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody for about six years ten months. Out of 20 witnesses, only 15 had been examined till date. As such, there is no possibility towards conclusion of the trial in the near future. 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 may not be necessary and he may be enlarged on bail on any stringent condition.

Mr. Ahmed, learned Additional Public Prosecutor appearing for the State opposes the petitioner's prayer and submits that trial had commenced. Majority of the witnesses have been examined save and except the Nodal Officer, Vodafone-Idea Ltd. and the I.O. The delay which has occurred is not totally attributable to the State. Furthermore, the period of delay stands intervened by a period lost due to pandemic. Let the report, as submitted by Mr. Ahmed, be kept on record.

Mr. Sinha, learned advocate enters appearance on behalf of the *de facto* complainant and opposes the petitioner's prayer.

In reply, Mr. Chakraborty, however, submits that applications under Section 311 of the Code are still pending and the trial had been substantially delayed by the prosecution.

Upon perusal of the report, as filed, we find that one application under Section 311 of the Code is pending consideration before the learned Court below. To expedite the trial, 4 witnesses (CSW 3, 5, 6 and 7) had been expunged. Only two witnesses are left for examination. Thus, it appears that the trial has progressed substantially. A period of about one year and six months was lost due to pandemics and for irregular function of the learned Court below. The delay in trial is thus not totally attributable to the State. In the said conspectus, we are not inclined to exercise any discretion in favour of the petitioner. As such, his prayer for bail is refused at this stage.

The application being CRM 8499 of 2021 is, accordingly, dismissed.

However, the learned Court below is directed to dispose of the pending Section 311 application and to examine the remaining two

witnesses immediately, without granting any unnecessary adjournment to either of the parties, so that the trial can be concluded at the earliest, preferably within a period of four months from date of communication of this order.

Registrar (Lawazima & Office Management) is directed to intimate this order to the learned Court below immediately.

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.)