

09.11.2022

Court No.32

rpan/ **02**

[Assigned]

C.R.M. 9431 of 2019

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Sessions Case no.215 of 2015 (Sessions Trial Case No.XXXIV of September, 2011) pending before the learned Additional Sessions Judge, re-designated Court, Paschim Medinipur, under Sections 120B/302/307/323/325/326/440 of the Indian Penal Code, Sessions 150/151 of the Indian Railways Act, 1989 and Sections 16/18 of the Unlawful Activities (Prevention) Act, 1967 arising out of CBI Case no. RC 4/S/2010-KOL dated 09.06.2010.

And

In re: **Dayamoy Mahato**

- Petitioner.

Mr. Debasish Roy,

Mr. Kaushik Gupta,

Ms. Mun Mun Gangopadhyay,

Ms. Nipa Sarkar

... for the Petitioner.

Mr. Kallol Mondal,

Mr. Amajit De

... for the CBI.

Mr. Roy, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody since 25th August, 2010. While rejecting the petitioner's prayer for bail lastly on 30th March, 2016 the Court expressed its desire that examination of remaining 154 witnesses should be completed within a year and the learned trial court was directed to take all steps to conclude the trial as expeditiously as possible. In spite of such direction there was no substantive progress in the trial and as on date 68 witnesses are yet to be examined and as such, there is no possibility towards conclusion of the trial in the near future.

He submits that the petitioner had been roped in on the basis of suspicion and arrested immediately after the alleged offence.

He was twice granted *ad interim* bail by the learned trial Court on 10th April, 2019 and 10th June, 2019 and he did not misuse such liberty. Investigation is complete and charges had been framed way back in the year 2012. The long pendency of the trial justifies the petitioner's prayer for bail on the anvil of delay. There is no perception of threat towards tampering of evidence in the event he is granted bail and there is also no possibility that he would abscond. It is not a case that the petitioner's prayer for bail before this Court was repeated on numerous occasions. Two accused persons, namely, Asit Mahato and Bimal Mahato, similarly situated with the petitioner, have already been granted bail.

Mr. Roy argues 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 arguments, Mr. Roy has placed reliance upon the judgments delivered in the cases of *Union of India Vs. K. A. Najeed*, reported in (2021) 3 SCC 713, *Satender Kumar Antil Vs. Central Bureau of Investigation & Another*, reported in AIR 2022 SC 3386, *Asim Vs. NIA*, reported in (2022) 1 SCC 695 and an unreported judgment of the Hon'ble Supreme Court delivered in the case of *Jahir Hak Vs. State of Rajasthan*.

Mr. Roy submits that different coordinate Benches of this Court had granted bail in cases involving death penalty and provisions of the Unlawful Activities (Prevention) Act (in short, UAPA, Act). In support of such argument, he placed reliance upon unreported orders passed in the cases of *Dhriti Ranjan Mahato*

[CRM 6233 of 2021], Ramasi Hansda [CRM (DB) 2389 of 2022], Indrajit Karmakar alias Khudu & Others [CRM 374 of 2020], Prasanta Patra [CRM (DB) 2050 of 2022] and Akhil Chandra Ghosh Vs. State [CRM 8869 of 2020].

Per contra, Mr. Mondal, learned advocate appearing for the CBI submits that the investigation has clearly revealed that in furtherance of a criminal conspiracy to carry out terrorist activities and to cause loss to human lives and property, the petitioner and other co-accused persons had damaged the railway track by removing the pandrol clips which resulted in the death of 148 persons and injury of 170 persons. For the said incident the Government had also incurred a loss of about Rs.29 crores. Considering the manner in which the offence has taken place and its gravity, the petitioner's prayer for bail needs to be refused as his liberty would be a menace to the society.

Drawing our attention to several documents in the case diary, Mr. Mondal has argued that the petitioner was the mastermind and he had trained the other co-accused persons for removing the pandrol clips. The CDRs of the mobile phone seized in course of investigation would clearly reveal the direct involvement of the petitioner, who happens to be a railway employee. Audio clips pertaining to such conversations had also been exhibited which stand supported by the forensic report.

Mr. Mondal submits that out of total 245 witnesses only 60 witnesses remain to be examined and as such, it cannot be said that there is no possibility towards conclusion of the trial in the near future. The delay which had occurred is not totally

attributable to the prosecution. Furthermore, the period of delay stands intervened by a period lost due to pandemic. It also needs to be pointed out that the concerned court was lying vacant since the month of February, 2022 and as such, the trial could not proceed. However, presently the presiding officer has joined and the next date is fixed today.

He argues that Section 436-A of the Code of Criminal Procedure (in short, the Code) has prescribed a period for half of the maximum sentence for which an undertrial prisoner can be detained. The petitioner does not fulfil such condition under Section 436-A of the Code since the incident involves death penalty and attracts the provisions of UAPA, Act.

Mr. Mondal submits that the judgments upon which reliance has been placed on behalf of the petitioner are distinguishable on facts. Considering the magnitude of the offence and the incriminating materials on record, the petitioner should not be enlarged on bail.

Pursuant to an earlier direction, Mr. Mondal has placed before this Court two reports dated 17th July, 2022 and 12th September, 2022. A perusal of the said reports would reveal that 60 witnesses are yet to be examined. The enclosed chart shows that on an average 17 witnesses were examined per year since the initiation of the trial in the year 2013 till date. In view thereof, we are of the opinion that there is no possibility towards conclusion of the trial in the near future. The fact that there had been laches on the part of the prosecution to conduct the case stands recorded in the order passed by the learned court below dated 10th April, 2019.

The observations contained in the order of this Court dated 30th March, 2016 had also not been granted appropriate weightage. In the report, filed on 17th July, 2022, it was *inter alia* stated that the C.D. containing CDRs and transcripts shall fix the role of the petitioner in the offence and the witnesses, namely, Khagendra Mahato, Aloke, Kumud, Shri Parimal, Shri Uday would prove the said facts. In answer to our query, it has been submitted that the examination of the said witnesses is already complete.

From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay which has occurred. The directions contained in the order dated 30th March, 2016 had also not been followed.

It is no longer *res integra* that even in cases involving offences under the statutes UAPA, Act and NDPS, Act which provide restrictions, bail can be granted to an undertrial prisoner, who has suffered half of the minimum punishment prescribed and when the delay which has occurred is substantially attributable to the prosecution. More the rigour the quicker the adjudication ought to be. The exposition of Article 21 of the Constitution in the case of *Hussainara Khatoon Vs. Home Secretary, State of Bihar, Patna* reported in 1980 (1) SCC 98 was exhaustively considered afresh in the case of *Abdul Rehman Antulay & Others Vs. R. S. Nayak & Another*, reported in 1992 (1) SCC 225 and it has *inter alia* been 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. For computing half of the sentence for life, the sentence

may be deemed as imprisonment for 20 years and in the present case the petitioner had already suffered long incarceration for more than ten years. The provisions of Section 436 –A of the Code cannot stand in the way towards grant of bail where the delay towards conclusion of trial had occasioned due to no fault on the part of the accused. In a very recent judgment delivered by the Hon'ble Supreme Court in the case of *Satender Kumar Antil (supra)* detailed guidelines have been laid down for grant of bail without fettering the discretion of the court concerned and keeping in mind the statutory provisions it has been observed that once a trial starts, it should reach the logical conclusion and even though court alone cannot be faulted for the adjournment given but even such delay on the part of the court would certainly violate Article 21. Whatever may be the nature of the offence, a prolonged trial against an accused would be violative of Article 21.

Applying the proposition of law as laid down in the judgments discussed above, to the facts of this case, we are of the opinion that further detention of the petitioner is not warranted.

Accordingly, we direct that the petitioner, namely, **Dayamoy Mahato** shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Additional Sessions Judge, re-designated Court, Paschim Medinipur with a further condition that he shall report to the Officer-in-Charge, Jhargram Police Station once a fortnight until further orders.

The petitioner shall also not leave the jurisdiction of Jhargram Police Station, save and except for attending the learned trial court on all the dates specified for hearing.

He shall intimate his mobile number and the address where he would be residing to the Officer-in-Charge, Jhargram Police Station immediately.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses in any manner whatsoever.

In the event the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

With the aforesaid observations, the application for bail, being CRM 9431 of 2019 is disposed of.

It is made clear that the observations which have been made in this order are for the purpose of deciding the bail application and shall have no effect in the trial.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)