

04.11.2022
Sl. No.12
akd
[ALLOWED]

C. R. M. (DB) 3462 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 26.09.2022 in connection with Baduria Police Station Case No.815 of 2016 dated 22.11.2016 under Sections 369/370(5)/315/120B/34 of the Indian Penal Code and Sections 75/80/81 of the Juvenile Justice (Care & Protection) Act, 2015.

And

In Re: ***Dr. Santosh Kumar Samanta***

... .. Petitioner

Mr. Amal Kumar Banerjee

... .. for the petitioner

Mr. Saswata Gopal Mukherjee .. Id. Public Prosecutor

Mr. Rudradipta Nandy .. Id. Addl. Public Prosecutor

Mrs. Sonali Das

... .. for the State

It is submitted on behalf of the petitioner that he is in custody for more than six years. In spite of direction given by this court, trial has not concluded as yet. Under such circumstances, co-accused viz. Dr. Dilip Ghosh @ Dilip Kumar Ghosh has been enlarged on bail by the Apex Court in Special Leave to Appeal (Crl.) No. 8232 of 2021. Accordingly, he prays for bail.

In view of the aforesaid submissions, report was sought for from the prosecution whether petitioner stands on the same footing with co-accused viz. Dr. Dilip Ghosh @ Dilip Kumar Ghosh.

Report is placed on record on behalf of the prosecution.

Learned Public Prosecutor strenuously argues petitioner is one of the principal conspirators in the offence.

We have considered the materials on record. From the report it appears that the petitioner had a more predominant role in the transaction than Dr. Dilip Ghosh @ Dilip Kumar Ghosh, who has been enlarged on bail. However, it is undeniable that the prosecution has lingered for long notwithstanding repeated directions by this court to

conclude the same. Inordinate delay in conducting trial infracts the fundamental right of an accused under Article 21 of the Constitution of India. On such premise, co-accused viz. Dr. Dilip Ghosh @ Dilip Kumar Ghosh has been enlarged on bail by the Apex Court. Moreover, vulnerable witnesses of fact have already been examined and two police officers are left to be examined.

Under such circumstances, we find no reason to prolong the undertrial detention of the petitioner. Accordingly, we are of the opinion further detention of the accused/petitioner is not necessary and he may be enlarged on bail however, subject to strict conditions.

Therefore, the accused/petitioner, namely **Dr. Santosh Kumar Samanta**, be released on bail upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Basirhat, North 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner, while on bail, shall not enter the jurisdiction of Basirhat Sub-Division except for the purpose of attending court proceedings.

In the event the petitioner evades the process of law or delay the proceedings without justifiable cause, it shall be open to the trial court to take appropriate steps including cancellation of his bail in accordance with law without reference to this court.

The application for bail, thus, stands **allowed**.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

