

21.10.2022

Item No.1.

G.S.Das/

Mithun

Ct.28.

CRM (DB)/3581/2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Serampore Police Station Case No.406 of 2015 dated 29.08.2015 under Sections 302/201 of the Indian Penal Code [S.T. No.3(1)/2016].

And

In the matter of : **Samaresh Sarkar.**

...petitioner.

Mr. Subir Ganguly, Adv.

Mr. Sumanta Ganguly, Adv.

Mr. Dibakar Sardar, Adv.

...for the petitioner.

Mr. Rudradipta Nandy, Adv.

Ms. Debjani Sahu, Adv.

...for the State.

Learned Advocate for the petitioner has prayed for bail on behalf of the petitioner on the ground of inordinate delay in concluding the trial of the case.

It is submitted by the learned Advocate for the petitioner that Sessions Trial was initiated in the year 2016 vide order dated 10th August, 2021. A Division Bench of this Court while rejecting the prayer of the petitioner for bail observed that out of 48 charge-sheeted witnesses, 31 witnesses were examined and therefore, the Trial Court was requested to expedite the trial and conclude the same to its logical conclusion as early as the business of the Court may permit and preferably within a period of one year from the date of passing of the said order. However, after the said order being communicated to the Trial Court, the Trial Court fixed as may as 20 dates but the remaining witnesses could not be examined. The accused is in custody for more than 7 years and one months. On merit, charge under Section 201 of the Indian Penal Code framed against the accused may be held to be substantiated during trial. No evidence was forthcoming in support of the charge under Section 302 of the Indian Penal Code against the accused so that the accused may be released on bail.

Learned Public Prosecutor-in-Charge has raised vehement objection against the prayer for bail on the ground that the accused committed brutal murder of two persons, amongst whom one was a pregnant lady. Their bodies were chopped off and concealed in a trolley bag and thrown away in the river. Only two witnesses are left to be examined. Therefore, the petitioner should not be granted bail. Having heard the learned Counsel for the parties and on careful perusal of the materials on record specially the order dated 10th August, 2021 passed in CRM 3821 of 2021, we find that previously this Court did not touch upon anything about the merit of the case. This Court was concerned only in respect of delay and procrastination of trial. Considering the gravity of the offence, we are also not inclined to grant bail to the accused. However, when it is learnt from the learned Public Prosecutor-in-Charge that only two witnesses are left, Trial Court is specifically directed to record evidence of the remaining two witnesses within 2 months after vacation. The Trial Court shall come to the logical conclusion of the case within one month thereafter.

However, It is pointed out by the learned Public Prosecutor-in-Charge that the Trial Court has already fixed 06.12.2022 and 07.12.2022 for recording of further evidence.

The Trial Court in consultation with the Public Prosecutor shall prepone the date of the hearing for recording evidence as per the direction made hereinabove. The learned Advocate for the defence is at liberty to communicate this order to the learned Trial Court obtaining server copy of the same.

Accordingly, the prayer for bail is **rejected**.

CRM(DB) 3581 of 2022 is, thus, **disposed of**.

All parties to act on the server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Prasenjit Biswas, J.)

(Bibek Chaudhuri, J.)