

19.10.2022

(AD 1)

(S. Banerjee/
AKG)

CRM (SB) 253 of 2022

In re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Andal Police Station Case No. 66 of 2020 dated 18.02.2022 under Section(s) 379 with added Sections 411 and 120B of the and Section 30(2) of the Coal Mines (Nationalization) Act, 1973.

And

In the matter of: Barik Biswas

...petitioner

Mr. Debasish Roy
Mr. Vivek Jhunhunwala

... for the petitioner

Mr. Kishore Dutta, Sr. Advocate
Mr. Rudradipta Nandy
Ms. Sonal Das

... for the State

The prayer for bail of the petitioner is taken up for hearing.

Learned lawyer for the petitioner moves the said application on the ground that the petitioner is suffering from several ailments and that he has been implicated in several false cases. The petitioner is in custody for 42 days and this is a case registered on 18.02.2020. It is further submitted that several other accused persons are on bail in this case and that the petitioner stand on the same footing. Another ground made out is that notice under Section 41A of the Code of Criminal Procedure was not given to the petitioner and as such he may be granted bail in the present case as the period of sentence in respect of

the offences for which the accused has been implicated is for a maximum period of three years. The learned lawyer for the petitioner submits that he will cooperate with the investigation and as such he may be released on bail.

Documents supporting his contention have been annexed to the said petition.

Mr. Dutta, learned senior advocate appearing for the State, submits that the nature of the case is very serious (Coal Scam) and the bail of another accused person namely, Sanjoy Mallik has been cancelled by the learned Sessions Court and his bail petition is pending before a Division Bench of this court. It is further submitted that the present petitioner is one of the principal accused and he is not on the same-footing as that of the other accuseds on bail. Mr. Dutta has produced the case diary and brought the notice of this court to the relevant documents relating to the present petitioner. It is submitted that the said documents clearly make out a case against the petitioner that he is one of principal accused, in the said case. It is further submitted that though the maximum sentence in respect of the offences alleged may be three years but the nature of offence is very serious and the matter is still under extensive investigation and releasing the petitioner on bail will hamper the investigation

From the materials in the case diary it has come before the Court, some of which are Whatsapp messages, that senior bureaucrats of the State have also been named. Whether they are involved in the present case or not, is subject to investigation. The said messages give an impression that the coal was being transported under their protection and they were monitoring the same. Mentioning the names of the senior government officials of the State in such cases (which is a very serious matter) is to be looked into by the investigating agency.

Mr. Dutta further submits that the Division Bench has refused interim bail to accused Sanjoy Mallik. The present petitioner and the said Sanjoy Mallik stand on the same footing and as such at this stage of investigation he should not be granted bail considering the nature of involvement of the present petitioner.

Investigation in this case is still continuing (considering the magnitude) and charge-sheet has not been submitted till date.

Learned lawyer for the petitioner has relied upon the judgements of this court in WPA 21788 of 2022 and WPA(P) 493 of 2022 and ruling cited in 2022 SCC Online SC 825 (Satender Kumar Antil Vs. Union of India). He has submitted that considering

the view of the Supreme Court in the said case the petitioner is entitled to bail.

Considering the submissions made by the lawyers for both sides, the materials on record, the stage of investigation, the other cases pending against the petitioner (including Coal and Cattle) the prima facie involvement of the petitioner in the present case and the nature of the case before this court, the benefit of the judgement in Satender Kumar Antil – Vs.- Union of India (Supra), cannot be extended to the petitioner at this stage.

Accordingly, the prayer for bail is rejected at this stage.

(Shampa Dutt (Paul), J.)