

04.11.2022.
19.
Ct.No.28
as
(Rejected)

C.R.M. (DB) 3759 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Amherst Street P.S. Case No.121 of 2021 dated 24.06.2021 under Sections 120B/419/420/467/468/471/474/307/274/275/276/170/188 of the Indian Penal Code and Section 51(b) of Disaster Management Act.

In the matter of : Ashoke Kumar Roy @ Ashok Roy
... Petitioner.

Mr. Sabyasachi Banerjee,
Mr. Avik Ghatak,
Mr. Soumya Nag,
Mr. Abhinav Rakshit.

...for the Petitioner.

Mr. Sudip Ghosh,
Mr. Apurba Kr. Datta.

...for the State.

Petitioner is in custody for one year and four months. He submits he had let out a premises to co-accused Debanjan Deb in ordinary course of business. He was unaware that Debanjan Deb had personated as an IAS Officer and had dishonestly organised vaccination camps at various educational and other institutions. In support of such plea, learned Counsel for the petitioner relies on documents to show that the petitioner and his family members were vaccinated in one of such camps. He also argues statements of witnesses showing nexus between the petitioner and the aforesaid co-accused are contradictory and ought not to be relied upon. Accordingly, he prays for bail.

Learned Advocate for the State opposes the prayer for bail. He submits petitioner is one of the conspirators who in collusion with the principal accused Debanjan Deb organised fake vaccination camps causing wrongful loss to members of

the public and wrongful gain to themselves. A number of cases have been registered against them. Petitioner was enlarged on bail in some of the cases without considering relevant materials and such orders may not be treated as relevant while dealing with the present bail application. He refers to statements of witnesses and other documents to show close association between the petitioner and the co-accused Debanjan Deb who conducted the fake vaccination camps. He further submits documents relied upon by the petitioner to show that he had been vaccinated in one of the camps are not genuine. They were neither produced by the accused persons in course of investigation nor are a part of the charge-sheet. It is further contended date has been fixed for consideration of charge and release of petitioner on bail at this stage may have adverse influence on vulnerable witnesses who have been cited to prove the conspiracy.

At the outset, we clarify that the petitioner was released on bail in some of the cases involving similar allegations as all materials collected during investigation had not been placed for its consideration. Hence, we are in agreement with the learned Counsel for the State that the said bail orders may not be of any use for either of the parties.

In this backdrop, we have considered the involvement of the petitioner independently and on the basis of materials collected in course of the present investigation. Statements of witnesses particularly that of Nilabha Dasgupta and Sohail Dutta show that petitioner was acquainted with the co-accused

Debanjan Deb and was aware of the fact that he was neither an IAS Officer nor an employee of Kolkata Municipal Corporation. Both witnesses spoke of the involvement of the petitioner in the wrongful activities of Debanjan Deb. In view of the aforesaid materials, it cannot be said petitioner was a mere landlord who was not involved in the nefarious activities of Debanjan Deb.

Learned Counsel for the petitioner has strenuously argued there are variations and/or embellishments in the statements of the said witnesses.

We have examined the statements of the aforesaid witnesses recorded under Sections 161 and 164 of the Code of Criminal Procedure. Gist of the statements are substantially corroborative of one another. Minor variations, if any, do not go to the root of the prosecution case viz., awareness of the petitioner that the co-accused was not a public servant and was dishonestly personating himself as an IAS Officer and carrying on illegal activities including setting up fake vaccination camps.

In course of hearing of the bail application, petitioner has relied on document to show that along with his family members were vaccinated in the said vaccination drive.

Learned Counsel for the State strongly disputed the veracity of the said document.

This document was neither produced by the accused persons in the course of investigation and has been belatedly relied upon by them. This raises some doubt with regard to its

veracity. On the other hand, there are overwhelming incriminating materials which show close nexus between the petitioner and co-accused Debanjan Deb giving rise to an inference of conspiracy to set up illegal vaccination camps and cause wrongful gain to themselves. Furthermore, monetary transactions like receipt of rentals by the petitioner from co-accused are mere cloaks to the conspiracy and do not in the aforesaid factual backdrop appear to be convincing materials to support the plea of innocence of the petitioner.

Needless to mention conspiracies are hatched in secrecy and hardly any direct evidence is available. Hence, inference with regard to the complicity of the petitioner in the conspiracy is to be drawn from conduct of the conspirators and other attending circumstances, which as discussed above, appears to be ample and incriminating.

Hence, we are of the opinion there are *prima facie* materials implicating the petitioner in the crime.

Gravity of the offence need not be emphasized. Petitioner and co-accuseds had entered into conspiracy to set up false vaccination camps in the course of pandemic and cheat innocent victims. The pandemic which pulverized the society was used as a convenient backdrop to feed the greed of the accused persons. Crime of such nature has far reaching impact in society and any lenient approach may shake the confidence of the victims in the justice delivery system.

Presently, matter is fixed for consideration of charge and the prosecution witnesses including vulnerable witnesses have

not been examined. At this stage, release of the petitioner on bail may severely derail the prosecution case as witnesses may be won over.

We are conscious that the petitioner is in custody for more than a year. Although for reasons recorded above, we are not inclined to grant bail to the petitioner at present but taking into account the detention already suffered by him, we emphasize on the necessity for a speedy conclusion of trial.

Under such circumstances, we direct the trial court to consider the issue of framing of charge on the next date fixed before it and if it is unable to do so, positively within a month thereof and in the event charge is framed to take the proceeding to its logical conclusion within one year from the date of framing of charge.

We also make it clear observations made by us are for the purpose of disposal of the bail application and shall not have any binding effect at the subsequent stage of the prosecution which needless to mention shall be decided independently on the basis of legal evidence and in accordance with law.

Accordingly, the prayer for bail of the petitioner is rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)