

11.07.2023

Serial no. 02

[Dd]

(allowed)

CRA (DB) 21 of 2023

In re : An Application under Section 21(4) of the National Investigation Agency Act, 2008.

-And-

In the matter of : Chhatradhar Mahato @ Mahata

... ...Appellant

*Mr. Milon Mukherjee, Id. Sr. adv.
Mr. Debasish Roy,
Mr. Avik Ghatak,
Mr. Soham De Dhara, Advocates
... ... For the Appellant*

*Mr. Bilwadal Bhattacharya, DSG
Mr. Kallol Mondal,
Mr. Bhaskar Prosad Banerjee,
Mr. D. Tandon, Advocates
... ...For the NIA*

The appeal was specially assigned to this Court. The appeal is pending since January, 2023.

Learned senior advocate appearing for the appellant submits that, the appellant was taken into custody in respect of three police cases. In order of time, the first police case is dated August 14, 2009, being Lalgah Police Station Case No. 111 of 2009. The appellant therein was released on February 7, 2013. The second police case in order of time is Lalgah Police Station case No. 161 of 2009. There, the appellant was released after serving the sentence imposed. The third police case is Jhargram Police Station Case No. 06 of 2009 dated October 28, 2009. In respect of this police case, the National Investigation Agency (NIA) filed a First Information Report dated April 1, 2020 and took the appellant into custody on

March 28, 2021. He submits that, the appellant therein was in custody for a period of time from 2019 onwards when, he was enlarged subsequent to the appellant serving the period of sentence imposed in Lalgah Police Station Case No. 161 of 2009. He highlights the fact that, the present First Information Report was lodged after expiry of about 11 years from the date of incident. He highlights the fact that, there is no possibility of the trial concluding any time soon. Charges are yet to be framed. According to him, the prosecution is likely to examine 59 witnesses. Consequently, he seeks grant of bail for his client.

Learned Deputy Solicitor General appearing for the NIA authorities submits that, the allegations as against the appellant are grave. The appellant was the mastermind in the hijacking of the Rajdhani Express on October 27, 2009. He orchestrated the entire incident when he was in custody.

Learned Deputy Solicitor General submits that, the appellant is extremely influential. He draws the attention of the Court to the order dated July 7, 2023 passed by the jurisdictional Court. He submits that, the appellant was instrumental in the State not producing all the accuseds before the Court, thereby preventing framing of charges. Moreover, the delay in the progress of the proceeding is not attributable to NIA. Learned advocates of the Court concerned resolved not to attend on various grounds on various dates which were fixed by the Court.

Learned Deputy Solicitor General submits that, it would be appropriate that the Court directs expeditious disposal of the case as against the appellant. In any event, the appellant is enlarged on bail, there is every likelihood of the trial being affected. The appellant is likely to exert his undue influence on the witnesses, therefore, affecting the trial.

We gave our anxious consideration to the rival considerations. The appellant is facing a criminal proceeding

in respect of an incident occurring on October 27, 2009. The First Information Report in respect of such incident was registered by NIA on April 1, 2020 after the expiry of almost 10 and ½ years from the date of the incident. The delay in registering the First Information Report is sought to be explained on behalf of the NIA on the contention that, appropriate report in terms of the National Investigating Act, 2008 was not made over to the NIA authorities for them to invoke the provisions of the Act of 2008 and register the First Information Report.

On one plane, there is a delay on the lodgment of the First Information Report. The delay is sought to be explained on the ground as noted above. However, such ground of delay cannot be attributable to the appellant, at least at the *prima facie* stage. In any event, the appellant was out of custody from 2019 till he was taken into custody in the present police case on March 28, 2021.

In respect of the other two police cases, in one of them being Lalgarh Police Station Case No. 161 of 2009, the appellant served his sentence. On other police case being Lalgarh Police Station Case No. 111 of 2009, the appellant was released on bail on February 7, 2013. Although, the appellant obtained bail on February 7, 2013, he was still in custody in respect of Lalgarh Police Station Case No. 161 of 2009.

In short, the appellant was not in custody from 2019 till March 28, 2021.

The prosecution is likely to examine 59 witness as it stands today. Charges as against the appellant are yet to be framed. It is not understood why, the accuseds who are in custody are not being produced before the learned Judge taking up the proceedings in the virtual platform in the event, such accuseds cannot be produced physically before the Court. Facility for production of an accused on the virtual platform is available. In the event, the same is not available, the learned

District Judge no doubt will take appropriate measures to make such facility available.

As noted above, charges are yet to be framed. The appellant is in custody since March 28, 2021 in respect of First Information Report lodged on April 1, 2020 with regard to an incident of October 27, 2009.

In such circumstances, taking into consideration the period of custody and the likelihood of the trial not concluding any time soon and the materials in the case diary, we grant bail to the appellant.

Accordingly, we direct that the appellant shall be released on bail upon furnishing a bond of Rs.50,000/- (Rupees Fifty Thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the **Learned Judge, Special Court, Calcutta, under NIA Act cum Chief Judge, City Sessions Court, Calcutta** subject to condition that the appellant shall appear before the learned trial court on every date of hearing until further orders and shall not intimidate witnesses and/or tamper with evidence in any manner whatsoever.

Given the nature of the allegations against the appellant, it would be appropriate that the appellant remains outside the Districts of Purba Medinipur, Paschim Medinipur, Jhargram, Bankura and Purulia. Appellant will provide the residential address at which the appellant will be residing subsequent to the grant of this order. Appellant will submit his address of residence to the Chief Investigating Officer (CIO) of the case. The appellant will also report to the CIO, NIA once a week until further orders.

In the event, the appellant fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without further reference to this Court.

The prayer for bail of the appellant is **allowed**.

CRA (DB) 21 of 2023 is **disposed of**.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)