

30.03.2023.
33.
Ct.No.28
as
(Allowed)

C.R.A. (DB) 35 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with New Alipore P. S. Case No.206 of 2017 dated 06.08.2017 under Sections 302/394/460/34 of the Indian Penal Code.

In the matter of : Suraj Molla.

.... Petitioner.

Mr. Satadru Lahiri,
Mr. Sayan Kanjilal.

...for the Petitioner.

Mr. Ranabir Roy Chowdhury,
Mr. Sandip Chakraborty.

...for the State.

Mr. Mit Guha Roy.

...for the Co-accused Zakir Hossain Molla.

Petitioner is a child in conflict with law. He is being tried as an adult before the Children's Court. He is in custody for more than five years. Trial has not concluded. He prays for bail.

Learned Advocate for the State opposes the bail prayer. He submits petitioner had run away from the children's home where he had been kept. He has attained majority and there is chance of abscondence.

We have considered the materials on record. Though the petitioner is alleged to have committed murder, he was a child in conflict with law at the time of occurrence. By operation of Section 21 of J. J. Act, 2015 (hereinafter referred to as 'the said Act of 2015'), no sentence of death or life imprisonment can be imposed upon him. Hence, it cannot be said that petitioner is facing trial for an offence punishable with mandatory life

imprisonment. He has suffered detention for more than five years. There is little possibility of trial concluding in the near future. Fear of abscondence may be addressed by restricting the movement of the petitioner.

Hence, we are inclined to grant bail to the petitioner subject to conditions.

Accordingly, the petitioner Suraj Molla shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Paraganas subject to condition that he 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 petitioner while on bail shall remain within the limits of Kolkata and shall report to the Officer-in-charge, New Alipore Police Station once in a week until further order.

In the event the petitioner fails to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

During the hearing of the bail application, it was brought to our notice a co-accused is facing trial on the self-same charge before another Court viz., learned Additional District and Sessions Judge, 8th Court, Alipore, South 24-Paraganas. This has inconvenienced the prosecution who is required to produce witnesses as well as material evidence

before two different courts. There is also apprehension of conflict of decisions in the matter.

In view of the aforesaid circumstances, a notice was issued upon co-accused viz., Zakir Hossain Molla.

Learned Advocate representing the said accused is before us. He submits that his case may be transferred to the court which is also trying the petitioner.

Learned Advocate for the petitioner draws our attention to Section 23 of the said Act of 2015. Section 23 of the Act, inter alia, bars joint trial of a child in conflict with law with an adult.

Though the aforesaid provision bars a joint trial, there is no bar if the trial of the adult on the self-same charge is conducted separately by the self-same court. In doing so, one may avoid conflict of decisions between two cases where accused are facing trial on the same charge. It shall also be convenient for the prosecution to adduce the same evidence in both the trials if they are conducted before the same Judge.

It may not be out of place to note that the Court of learned Additional Sessions Judge, 1st Court, Alipore, South 24-Paraganas has been notified as Children's Court and is in fact trying other cases involving adults.

Under such circumstances, we direct as follows:-

- 1) Proceeding against co-accused viz., Zakir Hossain Molla pending before the learned Additional Sessions Judge, 8th Court, Alipore, South 24-Paraganas be transferred to the learned Additional

Sessions Judge, 1st Court, Alipore, South 24-Paraganas-cum-Children's Court and be tried from the stage it has already arrived at;

- 2) Both the cases i.e. one against the petitioner and the other against the adult accused shall be tried one after another but separately;
- 3) The cases shall be disposed of expeditiously preferably within one year from the next date fixed for recording evidence in the said cases. Parties shall co-operate with the trial court in expeditious disposal of the cases.

Department is directed to send copy of this order to the trial court for due compliance.

The application for bail is, thus, disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)