

22.08.2023.
17.
Ct.No.28
as
(Rejected)

C.R.A. (DB) 82 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Special NIA Case No.07 of 2021 arising out of R. C. Case No.19 of 2021/NIA/DLI corresponding to S.T.F. P. S. Case No.11 of 2021 dated 10.07.2021 under Sections 120B/204/419/465/468/471 of the Indian Penal Code and Sections 17/18/38 of the Unlawful Activities (Prevention) Act read with Section 14A(b) of the Foreigners Act.

In the matter of : Lalu Sen @ Rahul Sen @ Rahul Kumar.
... Petitioners.

Mr. Sandipan Ganguly, ld. Sr. Adv.,
Mr. Mrityunjoy Chatterjee.
...for the Petitioners.

Mr. Bhaskar Prosad Banerjee,
Mr. D. Tandon.
...for the NIA.

1. Petitioner is in custody for more than two years. He contends allegations of abetting terrorist activity has not been established. It is also contended he is an Indian national and used to carry on import export business. As a consequence, he came in touch with A-5 i.e. Md. Abdul Mannan Bachu @ Mannan @ Md. Abdul Mannan Sheikh, a co-accused. Recovery of Aadhaar card and other documents cannot be considered as an incriminating circumstance as the petitioner is involved in international trade. Prosecution proposes to examine 61 witnesses and there is no possibility of trial concluding in the near future. Accordingly, he prays for bail.

2. Learned Advocate for the NIA submits petitioner had entered into a conspiracy with co-accused particularly A-1 i.e. Najiur Rahaman Pavel @ Najiur Rahman @ Pavel @ Joyram Byapari @ Joseph and abetted the illegal activities of terrorist organization. Money trail shows monies were paid by a third party at the instruction of the petitioner to A-1. Aadhaar card of A-1 i.e. Najiur Rahaman Pavel @ Najiur Rahman @ Pavel @ Joyram Byapari @ Joseph was recovered from the mobile phone of the petitioner. Charge has been framed but examination of witnesses was held up as trial court records had been produced before this Court. He opposes the bail prayer.

3. We have considered the materials on record. Prosecution case involves illegal activities of terrorist organizations '*Jammat-ul-Mujahidden, Bangladesh*' and '*Al Qaida in Indian subcontinent*' (JMB & AQIS for short) in the State. Najiur Rahaman Pavel @ Najiur Rahman @ Pavel @ Joyram Byapari @ Joseph, A-1 is the principal player. Petitioner who ostensibly claims to carry on business in import and export aided and abetted A-1 and his associates in illegally entering the country. Aadhaar card of A-1 was recovered from the mobile phone of the petitioner. Monetary transactions between petitioner and A-1 is also evident from the materials on record. Apart from having telephonic conversations with A-1, he had continuous telephonic exchanges with Md. Abdul Mannan Bachu @ Mannan @ Md. Abdul Mannan Sheikh as a part of the conspiracy. These materials form sufficient foundation in

support of the allegation of conspiracy and involvement of the petitioner in offences under UAPA Act.

4. In view of the aforesaid materials, trial court has duly framed charge against him. In this background, the prosecution has been able to place the *prima facie* materials to show involvement of the petitioner in the commission of offences under UAPA Act and restrictions to bail under Section 43D(5) of the said Act come into play.

5. Hence, we are not inclined to enlarge the petitioner on merits.

6. On the ground of delay, we note though petitioner is in custody for two years, allegations are very grave and involve activities of terrorist organizations. Charge has already been framed and delay was due to systemic reasons and cannot be wholly attributed to the prosecution.

7. Accordingly, we are not inclined to invoke our constitutional powers and enlarge the petitioner on bail on the ground of delay at this stage.

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

9. We have taken note of the period of detention of the petitioner as well as the number of witnesses proposed to be examined.

10. Prosecutor is requested to consider streamlining the list of prosecution witnesses in order to conclude the trial at an early date.

11. Trial court is requested to conduct the trial with utmost expedition and conclude the same preferably within two years from the next date fixed for recording evidence.

12. Parties shall co-operate with the trial court in this regard.

13. Copy of this order be sent to the trial court for due compliance.

(Rai Chattopadhyay, J.)

(Joymalya Bagchi, J.)