

19.09.2023
tkm/ct 28
sl no. 29

CRR 2802 of 2023
in
C.R.M. (DB) 2942 of 2023

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Kasba P.S case no. 172 of 2021 dated 26.6.2021 under sections 120B/419/420/467/468/471/170/276//188 IPC read with section 58(1) of the Disaster Management Act and

Allowed

In Re : Susanta Das ... petitioner

Mr. Anirban Guhathakurta
Ms. Koel Mukherjee
Mr. Anurag Sardar
Mr. M Murshed
Ms. Sayan Mukherjee

..... for the petitioner

Mr. Ranabir Roy Chowdhury
Mr. Mianak Gupta

..... for the State

Mr. Sandipan Ganguly, Sr. Adv
Mr. Avik Ghatak
Mr. A Rakshit

..... for the OP

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1. During hearing of bail application of co-accused Susanta Das and Shantanu Manna., this court noticed that bail had been granted to the respondent Ashok Roy referring to sub-section 6 of section 437 Cr.P.C. The said provision relates to a case triable by magistrate but the present case is a sessions triable one.
2. The provision lays down in the event in a magistrate triable case trial is not concluded within 60 days from the first date fixed for recoding evidence, the accused shall be released on bail unless for reasons recoded in writing the Magistrate declined to do so.
3. The said provision is a statutory acknowledgment of right of an accused to speedy trial particularly when he is in custody.

4. In the present case, the petitioner had been in custody for more than 647 days i.e. more than one and half year. Only two out of 71 witnesses cited by the prosecution in the charge sheet had been examined.

5. In view of the inordinate delay in trial petitioner pleaded for bail and the same found favour with this court. Under the erroneous impression all offences are triable by a magistrate, reference was made to section 437(6) Cr.P.C.

6. Mr. Ganguly has rightly submitted the essence of the bail order was the inordinate delay in trial resulting in breach of the fundamental right to speedy trial of the accused enshrined under Article 21 of the Constitution. Reference to section 437(6) Cr.P.C was merely incidental.

7. Allegations levelled against the petitioner are no doubt grave. He was the owner of the premises which had been used to set up fake vaccination camp during pandemic. But the prosecution has not responded with adequate alacrity and the trial appears to have meandered resulting in prolonged incarceration. These circumstance weighed with the court while granting bail to the respondent-accused. There is no allegation that the respondent-accused after his release had sought adjournment or delayed the trial. On the other hand prosecutor's role is a matter of serious concern.

8. We are informed since May 2023 no witnesses have been examined.

9. Under such circumstances, we are not inclined to set aside the order granting bail to the respondent-accused.

10. We, however, direct the observation “offences are triable by magistrate” and reference to section 437(6) Cr.P.C in the order dated 25.7.2023 be expunged.

11. With these directions, the Rule is discharged.

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12. Petitioner is in custody for 817 days. It is submitted there is slow progress in the trial. He prays for bail.

13. Learned lawyer for the State submits two witnesses have been examined.

14. We have considered the materials on record. Petitioner is in custody for a considerable period of time. There is slow progress in the trial. Only two out of 71 witnesses cited in the charge sheet have been examined.

15. Under such circumstances, we are of the opinion further detention of the petitioner would infract his fundamental right to speedy trial and he is entitled to bail on this score alone.

16. Accordingly, the petitioner 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 CJM, South 24 Parganas at Alipore on condition that the petitioner shall appear before the trial court on every date of hearing and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

17. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

18. The application being CRM (DB) 2942 of 2023 is disposed of.

(Ajoy Kumar Mukherjee, J.)

(Joymalya Bagchi, J.)