

12.09.2023
Sl. No.12
akd
[ALLOWED]

C. R. A. (DB) 255 of 2023

In Re: A petition for admission of appeal under Section 389(2) of the Code of Criminal Procedure filed on 16.08.2023 in connection with NIA Case No.06 of 2022 arising out of NIA Case No. RC-45/2022/NIA/DLI dated 18.10.2022 under Sections 147/148/149/152/353/332/427/436/307 of the Indian Penal Code and Sections 4/5/6 of the Explosive Substances Act, Sections 25/27 of the Arms Act and Section 3 of the PDPP Act.

And

In Re: ***Zakir Hossain***

... .. Appellant

Mr. Y. J. Dastoor .. Sr. Advocate
Md. Adil Badr
Mr. Sobhan Gani
Mr. Shakti Shivam
Md. Tarique Masood
Ms. Nafisa Anwar
Mr. A. K. Chowdhury
Mr. Vishal Prasad

... .. for the appellant

Mr. Arun Kumar Maiti
Mr. Bhaskar Prosad Banerjee
Mr. Debasish Tandon
Mr. P. Baidya

... .. for the NIA

1. It is submitted on behalf of the appellant that he is in custody for about 126 days. Co-accused have been enlarged on bail. Investigation is complete. Accordingly, he prays for bail.
2. Report on behalf of the NIA is placed on record.
3. Learned Advocate for the NIA opposes the prayer for bail and submits appellant had absconded and was trying to escape the country.
4. In response, it is submitted on behalf of the appellant that he was admitted in a hospital. He was brought out of the hospital and shown arrested.

5. We have considered the materials on record. In October, 2022, a dispute broke out between two communities. Bombs were thrown. None of the members of either of the community was injured. Police personnel suffered injuries and FIR was registered. As the case involved offences under the Explosive Substances Act which is a statute included in the schedule appended to NIA Act, the matter was referred to the National Investigation Agency (NIA) under Section 5 of the NIA Act to take over investigation. Thereafter, investigation was taken over by the NIA and has ended in charge sheet.
6. Having considered the materials on record, co-accused have been enlarged on bail. Involvement of the appellant in the crime is more or less similar. The additional issue which is canvassed against him is that he tried to escape. On the other hand, appellant would like this court to believe that he was medically treated in a hospital at Raxaul. We choose not to comment on the wisdom of the appellant who is a resident of Kolkata to have himself treated at a place which is not renowned for its medical institutions.
7. Be that as it may investigation is complete and there is little possibility of trial concluding in the near future. Balancing the involvement of the appellant in the crime with the period of detention suffered by him, we are of the opinion further detention of the appellant may not be necessary and he may be enlarged on bail but his movement requires to be restricted in order to ensure his attendance during trial.
8. Therefore, the appellant, namely, **Zakir Hossain**, 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 Chief Judge, City Sessions Court, Calcutta subject to condition that the said appellant 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 that the appellant, while on bail, shall not enter the municipal limits of Kolkata except for the purpose of attending court proceedings and shall provide the address where he shall presently reside to the Investigating Agency as well as the court below and shall report to Check Pal Sehwat, Dy. SP/CIO, National Investigating Agency having office at NIA, 15th floor, NBCC Square, Action Area-III, New Town, Kolkata - 700135 once in a week until further orders. Prior to his release, appellant shall deposit his passport, if any, with the trial court.

9. In the event he fails to comply with any of the aforesaid conditions, the trial court shall be at liberty to cancel his bail in accordance with law without reference to this court.

10. The appeal is, accordingly, allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)