

12.07.2023

Item no.8

Court No.1.

AB

(Allowed)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

CRM (DB) No. 278 of 2023

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Darjeeling Sadar Police Station Case No.213 of 2017 under Section 353/120B/307/302 of the Indian Penal Code read with Sections 25/25(i)A/25(iAA)/25(B)/25(2)/27 35 of the Arms Act read with Section 3 /4 of the E. S. Act

And

In the matter of : Suraj Pradhan & Ors.

.....Petitioners.

Mr. Pratap Khati,
Ms. Bandana Rai for the Petitioners.

Mr. A. S. Chakraborty, Id. APP,
Mr. Arjun Chowdhury for the State.

Report as was called for by this Court has been filed by learned Chief Judicial Magistrate, Darjeeling. We have perused the report. It, inter alia, states that there is no laches on the part of the State in proceeding with the matter.

It is true that the charges are framed under various Sections of the Indian Penal Code including Section 302. However, the petitioners are in custody for more than six years. The case has not yet been committed since execution/returns of warrant of arrest and WPA of several accused persons are still pending, as appears from the aforesaid report of the Chief Judicial Magistrate, Darjeeling.

Although there may be no laches on the part of the State, we cannot be unmindful of the importance of Article 21 of the Constitution of India and the principles of law laid down by the Hon'ble Supreme Court in the cases of ***Kashmira Singh – Vs.- State of Punjab***, reported in ***(1977) 4 SCC 291***, ***Akhtari Bi (Smt) – Vs. – State of Madhya Pradesh***, reported in ***(2001) 4 SCC 355***, ***Surinder Singh – Vs.- State of Punjab***, reported in ***(2005) 7 SCC 387*** and ***Hussain & Anr. – Vs. – Union of India***, reported in ***(2017) 5 SCC 702***.

In ***Kashmira Singh*** (supra), the Supreme Court laid down that the normal practice of not suspending a sentence of life imprisonment must be changed. Such a practice was followed earlier on the assumption that an appeal against conviction would be heard out at an early date. Such is not the case since the present volume of litigation does not permit an appeal to be speedily disposed of. Balancing all factors and keeping in mind Article 21 of the Constitution and also keeping in mind that a conviction does not attain finality so long as it is under the scrutiny of the appellate forum, it was held that if a convicted person is in custody for an appreciable length of time, his prayer for suspension of sentence, pending disposal of the appeal, should be considered favourably. In our view, the aforesaid principle would apply mutatis mutandis also to an application for bail pending trial. If the trial has not commenced for a very long period of time after the petitioner is taken into custody, in this case more than six years, then in our view, the

petitioner should be extended the privilege of bail, of-course on conditions.

There is no certainty as to when in the present case, the trial shall commence or conclude. In view of the aforesaid decisions of the Hon'ble Apex Court, we are inclined to enlarge the petitioners on bail but on stringent conditions.

Accordingly, we direct that the petitioners, namely Suraj Pradhan, Shyam Kami, Deoraj Lepcha, Mahindra Kami, Firoj Thapa, Ashbin Gurung, Dawa Sherpa @ Dawa Tempa Sherpa, Nabin Rai and Paras Mangar shall be released on bail upon furnishing a bond of Rs.5,000/-each, with two registered sureties of like amount each, to the satisfaction of the learned Chief Judicial Magistrate, Darjeeling and on further condition that the present accused petitioners shall not leave the district Darjeeling unless permitted by the learned Trial Court and shall appear before the Trial Court on each date of substantive hearing subject to the provisions of Section 317 Cr.P.C. and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever.

Considering the delay that has occurred in Darjeeling Sadar P.S. Case No.213 of 2017, learned Chief Judicial Magistrate, Darjeeling is hereby directed to take appropriate steps for splitting up the trial and for immediate commitment of the said case to the learned Sessions Judge after complying with all legal formalities.

In the event the petitioners fail to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioners' bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)

(Arijit Banerjee, J.)