

19.03.2024
tkm/ct 28
sl no. 45

C.R.M. (DB) 782 of 2024

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Maidan P.S case no. 143 of 2010 dated 4.12.2010 under sections 121A/121/122/120B IPC and section 16(1)(b)/18/20 of the Unlawful Activities (Prevention) Act
and

Allowed

In Re : Bimal Mallick alias Bimal Mallik alias Buchu alias Sankar
... petitioner

Mr. Kaushik Gupta
Mr. A B Bagchi

..... for the petitioner

Mr. Debasish Roy, Id PP
Mr. R D Nandy

..... for the State

1. Petitioner is in custody for more than 13 years. He submits allegations relating to waging war and under UAPA are unfounded. Materials seized from the petitioner would not give rise to such an impression. His client had been advised to challenge the legality of the proceeding which was instituted before a magistrate in CRR 3079 of 2022. An order of stay was passed therein. Under similar circumstances, a learned single judge of this court has quashed the proceedings under UAPA Act. Co-accused are on bail. Accordingly, he prays for bail.

2. Learned lawyer for the State opposes the bail prayer. He contends delay was caused due to obstructionist attitude of the erstwhile lawyer representing the petitioner. Petitioner also obtained a stay of proceeding. He does not stand on the same footing with co-accused who are on bail.

3. We have considered the evidence on record. FIR was registered on 4.12.2010 and petitioner was arrested. Thereafter charge sheet was filed on 29.4.2011. However charge was framed after a lapse of 12 years in March 2023. During this period

proceedings were not stayed but it is argued petitioner through his erstwhile lawyer had obstructed the framing of charge by filing frivolous applications. It is true observations against the erstwhile lawyer has been made by the trial court while rejecting the bail prayer. However, we note the prosecution remained silent and did not approach this court for directions with regard to prompt framing of charge. Stay order passed in CRR 3079 of 2022 has expired in October 2023 but no witnesses have been examined till date.

4. On merits, it is argued authorship of the pamphlets has not been established. Other articles recovered from the petitioner are lawful objects and by themselves would not lead to inference of anti national activities. Co-accused are on bail.

5. in view of the aforesaid even if one takes into consideration the recalcitrant attitude of the lawyer of the petitioner it is undeniable prosecution extremely was lax in proceeding with the trial and copiously contributed to the delay. Prosecution proposes to examine 35 witnesses (though 44 are cited in the charge sheet) and there is little possibility of trial concluding in the near future. Under-trial detention of the petitioner is considerable and has infringed his right to speedy trial. Petitioner is entitled to bail on this score¹

6. 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 Chief Judge, City Sessions Court, Bichar Bhavan, Calcutta on

¹ *UOI vs. KA Najeeb*, (2021) 3 SCC 713

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 and on further condition that the petitioner while on bail shall not leave the jurisdiction of Ghola P.S save and except for attending the dates specified for hearing before he learned trial court.

7. 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.

8. We request the trial court to proceed with the trial in accordance with law subject to result in CRR 3079 of 2022.

9. Parties shall co-operate with the trial.

10. The application being CRM (DB) 782 of 2024 is disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)