

06.05.2024
19
sdas
rejected

C.R.M.(DB) No. 1309 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Hare Street Police Station Case No. 260 of 2022 dated 13.09.2022 under Sections 120B/419/420/466/467/468/471/474 of the Indian Penal Code.

And
In Re : Mahesh Fogla Petitioner

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Karan Dudhwewala
....for the petitioner

Mr. Debasish Roy, learned PP
Mr. Rudradipta Nandy, learned APP
Ms. Nahid Ahmed
..... for the State

1. Learned Senior Counsel for the petitioner submits he is in custody for one year and five months. It is also submitted offences are triable by learned Magistrate and inspite of direction given by the Hon'ble Apex Court in Special Leave to Appeal (Crl.) No. 14146 of 2023 trial has not concluded. He renews his prayer for bail.

2. Learned Counsel for the State opposes the bail prayer and submits petitioner is a conspirator who set-up the fictitious companies and assisted the dealers in evading tax. Some of the dealers filed writ petitions on the strength of a forged power of attorney. Trial is in progress and would have concluded but for the fact a proclaimed offender was arrested and witnesses had to be re-examined. Be that as it may, eighteen witnesses have been examined and it is assured that

the trial shall be concluded positively within six months from date.

3. We have considered the evidence on record. In course of investigation a large number of fictitious documents relating to shell companies were recovered from the petitioner. Charges framed alleges petitioner is a conspirator who aided and abetted the lawyer viz. Mr. Goutam Banerjee and his agent Mr. Jayanta Koley to file fictitious writ petitions to evade tax. A learned Single Judge of this Court directed registration of FIR. While rejecting the bail prayer of the petitioner in July, 2023 this Court noted twelve witnesses had been examined and observed trial may be concluded within six months from date. Matter travelled to the Hon'ble Apex Court and by order dated 06.11.2023 the Apex Court gave liberty to the petitioner to approach this Court if trial did not conclude within the time specified. It may be relevant to note that the order fixing time schedule in July, 2023 was not communicated to the trial court. It was ultimately communicated after the same came to be reiterated by the Hon'ble Apex Court in November, 2023. Eighteen witnesses had been examined till date. In the meantime, a proclaimed offender viz. Devki Nandan Sharma was arrested and witnesses had to be recalled for cross-examination. This resulted in delay which cannot lie at the doorstep of the prosecution. Allegations are grave and disclose involvement of the petitioner in the conspiracy of preparing forged documents and knowingly use them in court proceedings. In view of gravity

of the offence and as prosecution has taken all endeavour to proceed with the trial expeditiously notwithstanding the abscondence of the co-accused we are not inclined to extend the benefit of Section 437(6) of the Code of Criminal Procedure to the petitioner. Prosecution assures to complete the case positively within six months from date subject to co-operation by defence and systemic delays. Under such circumstances we are not inclined to grant bail to the petitioner at this stage.

4. The application for bail. is, thus, rejected.

5. We request the trial court to conduct the trial on a day-to-day basis and conclude the same at an early date not later than six months from the next date fixed for recording evidence without granting unnecessary adjournment to either of the parties.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)