

05.
Court
No.28

04.09.2024

(Tanmoy)

Allowed

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (DB) 1679 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 / Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, arising out of **RC Case No.0562021S0041** dated **21.09.2021** under Sections **143/144/147/148/149/302/34** of the Indian Penal Code.

And

In the matter of: - **Swapan Kumar Paira**

...petitioner.

Mr. Milon Mukherjee, Ld. Sr. Adv.
Mr. Biswajit Manna

...for the petitioner.

Mr. Dhiraj Trivedi, Ld. DSGI
Mr. Amajit De, Spl. PP

...for CBI.

Dictated by Arijit Banerjee, J.

1. Read order dated July 19, 2024.
2. An order dated August 9, 2024, passed by the Hon’ble Supreme Court of India in Transfer Petition (Criminal) Diary No. 51357/2023, has been placed before us. The Hon’ble Supreme Court has been pleased to clarify that, *“notwithstanding the pendency of this petition in this Court, if the bail petitions/applications filed by the accused are pending before the Trial Court or the High Court, the Courts are free to decide the bail applications in accordance with law.”* However, the *interim* order of stay of trial continues to operate. The matter has been directed to be listed on September 20, 2024.

3. Mr. Mukherjee, learned Senior Advocate representing the petitioner, says that the petitioner is in custody since February 20, 2022 i.e., for about two and half years. Only 17 out of 92 charge-sheet named witnesses were examined before the trial was stayed by the Hon'ble Supreme Court on the prayer of Central Bureau of Investigation (CBI). Solely on the ground of prolonged detention, the petitioner may be enlarged on bail.
4. Strongly opposing the prayer for bail, learned Deputy Solicitor General of India (DSGI), Mr. Dhiraj Trivedi, says that there are vulnerable witnesses who are yet to be examined. The witnesses, who have already deposed, have categorically stated that this petitioner is one of the primary assailants. The charge is of murder. If the petitioner is released on bail, he is very likely to intimidate and threaten the vulnerable witnesses who may thereupon turn hostile to protect themselves. Hence, the petitioner should not be released on bail.
5. We have considered the rival contentions of the parties. The prosecution may have a very strong case for convicting this petitioner. But we are not on that. The fundamental right of a citizen under Article 21 of the Constitution of India, to personal liberty and speedy trial, must override all other considerations. The petitioner is in custody for about two and half years. There is no possibility of an early conclusion of the trial. Even if on September 20, 2024, the Hon'ble Supreme Court is pleased to lift the stay order and permits

the trial to proceed, it is anybody's guess as to when the trial will conclude. Huge number of witnesses remain to be examined.

6. Hence, without making any comment on the merits of the case, solely on the ground of delay and prolonged detention of the petitioner, we are inclined to allow the petitioner's prayer for bail.
7. Accordingly, we direct that the petitioner, namely, **Swapan Kumar Paira** shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Jhargram, subject to condition that the petitioner shall appear before the Trial Court on each and every date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973 / Section 355 of Bharatiya Nagarik Suraksha Sanhita, 2023, and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and on further condition that the petitioner, while on bail, shall not enter the geographical limits of the district of Jhargram except for the purpose of attending Court proceedings, if and when the trial commences, until further orders and shall also furnish the local address where he will be residing to the Officer-in Charge of Jhargram Police Station and shall meet the Officer-in-Charge of the jurisdictional police station, where he will be residing, once in a week, until further orders.

8. As far as the apprehension of CBI is concerned that the vulnerable witnesses may be threatened or intimidated or otherwise influenced by the petitioner, we direct the Superintendent of Police, Jhargram, to take appropriate measures for personal safety and security of the vulnerable witnesses, whose names will be supplied by CBI to the Superintendent of Police, Jhargram by tomorrow (05.09.2024).
9. The Superintendent of Police, Jhargram, shall also ensure that the petitioner in no way gets in touch with or harasses the vulnerable witnesses.
10. The vulnerable witnesses will be at liberty to approach the Superintendent of Police, Jhargram, or the learned Trial Court if they are intimidated or threatened or otherwise harassed by the petitioner.
11. In the event the petitioner fails to adhere to any of the conditions stipulated above without any justifiable cause, the Trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.
12. The application for bail being CRM (DB) 1679 of 2024 is accordingly disposed of.
13. Criminal Section is directed to make available urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)