

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

CRM (DB) 1510 of 2024
Sk. Md. Anisur Rahaman
Vs.
The State of West Bengal

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Petitioner : Mr. Milan Mukherjee, Sr. Adv.,
Mr. Sandipan Ganguly, Adv.
Mr. Gautam De, Adv.
Mr. Biswajit Manna, Adv.
Mr. Mangaljit Mukherjee, Adv.
Mr. Duttatraya Dutta, Adv.
Mr. Arkadeb Bhattacharya, Adv.

For the State : Mr. Kaushik Gupta, Ld. Spl. P.P.,

For the Victim : Mr. P.S. Patwalia, Sr. Adv.,
Mr. Sourav Chatterjee, Adv.
Mr. Rajdeep Majumder, Adv.
Ms. H. Basin, Adv.
Mr. Soumya Nag, Adv.
Mr. Aditya Tiwari, Adv.
Ms. Namrata Chatterjee, Adv.

For Orders On: 08.11 .2024

Apurba Sinha Ray, J. :-

1. The petitioner claims that he is innocent and there is no direct evidence to entangle him in this case but in spite of that he has been languishing in judicial custody for more than 5 (five) years. The case was started on 07.10.2019 and the petitioner was arrested on 04.11.2019 on the basis of a co-accused's statement. Charge sheet was filed on 04.01.2020. Charge was framed on 13.03.2020. From the materials on record it is alleged that Anisur Rahaman, the petitioner herein, is the conspirator of the murder of one Kurban Sha. 74 witnesses out of 107 witnesses have been examined and there is no chance of an early conclusion of the trial since a huge number of witnesses is going to be examined by the prosecution. It is further submitted that most of the prosecution witnesses have turned hostile. The recent decisions of the Hon'ble Supreme Court show that an accused cannot be incarcerated for an indefinite period on the ground of pending criminal trial. In such a situation the accused should be granted bail by the court on certain conditions ensuring his presence at the time of trial. Therefore, in view of his long detention in custody and also the fact that there is no chance of an early conclusion of the trial the petitioner may be enlarged on bail on any condition that the court may decide. In support of his such contention, learned Senior Advocate Mr. Mukherjee has referred to the Hon'ble Apex Court's judgment dated 13.08.2024 in connection with Criminal Appeal No. 3173 of 2024 (Jalaluddin Khan Vs. Union of India), the

judgment dated 09.08.2024 in Criminal Appeal No. 003295 of 2024 arising out of SLP (Criminal) No. 8781 of 2024 (Manish Sisodia Vs. Directorate of Enforcement), and also the judgment dated 30.07.2024 in connection with Criminal Appeal No.003166 of 2024 arising out of SLP Criminal No. 12769 of 2023 (Anubrata Mondal @ Kesto Vs. The Central Bureau of Investigation & Anr.).

2. Mr. Mukherjee has drawn our attention to paragraph 21 of *Jalaluddin Khan's case (supra)*:-

“Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant

of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.”

3. Paragraph 53 and 54 of **Manish Sisodia’s case** (supra) have been referred to which may be quoted herein below:-

“53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is

flooded with a huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is the rule and jail is exception".

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

4. The learned counsel has also drawn our attention to the observations of the Hon'ble Supreme Court in connection with **Anubrata Mondal @ Kesto's**

case (supra). The paragraph no. 5 of the said decision is reproduced herein below:-

“Having regard to the submissions made by the learned senior counsels appearing for the parties and to the documents placed on record before us, it appears that there are serious allegations against the appellant-accused, however he is in custody since 11.08.2022 (approximately two years till today) and the trial is at the stage of submission of documents of the charge-sheet under Section-207 of the Cr.P.C. It also appears that the papers of the charge-sheet are very voluminous and some of them are in Bengali language, for which, the Special Court has directed the respondent-CBI to get them translated. The learned ASG, Mr. S.V. Raju, has assured this Court that all the documents shall be translated at the earliest, preferably within 45 days from today. However, from the voluminous record of the charge-sheet, it appears that the trial will take long time. It is also not disputed that the other co-accused, more particularly, the accused no.2 Md. Enamul Haque, has been

released on bail by this Court vide Order dated 24.01.2022.”

5. Learned Special Public Prosecutor appearing for the State, Mr. Gupta has submitted before this court that 74 witnesses have been examined and at best 25 more witnesses will be examined by the prosecution. It is nobody's case that the petitioner opened fire on the deceased. It is the prosecution's case that he is the mastermind of the brutal murder of Kurban Sha. The petitioner uttered before several persons that he would finish Kurban Sha. In this regard, the learned counsel has drawn the attention of this court to the depositions of PW 26, 30, 60 and 61. It is further contended by the Special Public Prosecutor of the State that photographs and sketch map of place of occurrence have been recovered from the possession of the present petitioner and the actual assailant showing that the murder was preplanned and the present petitioner had an active role in committing such crime. However, the Special Public Prosecutor who was appointed on the recommendation of the learned Chief Judge, City Sessions Court, Kolkata with the approval of the High Court at Calcutta, pursuant to the direction of the Hon'ble Supreme Court , has candidly submitted that the State is not providing sufficient assistance to the public prosecutor in pursuing the case.

6. Mr. Patwalia, learned Senior Advocate appearing for the defacto-complainant, has submitted that this case cannot be equated with other cases since the State has taken active role to screen the offender in gross

violation of the law of the land. The learned senior counsel has submitted a list of dates for impressing upon this court that how and in what manner the prosecution of this case has been delayed and protracted. He has openly submitted that both the State and the accused are on the same boat in protracting the trial on various frivolous grounds. The learned counsel has drawn specific instances by referring to the several orders of the Learned Trial Court in support of his contention. According to him, the cause of delay is attributable to the accused solely. From the very inception of this case, the prosecution witnesses including defacto-complainant have been pressurized, traumatized for not disclosing the evidence regarding commission of the offence. When delay is attributed to the accused, he cannot seek benefit for protraction of the proceedings. Several official and government witnesses are not responding to the summons of the trial court to appear as witnesses and they remain absent on a number of occasions causing delay in the proceedings. The learned counsel has also submitted that as day to day proceedings are being conducted in the Learned Court of Chief Judge, City Sessions Court, Kolkata, the trial is expected to be completed very soon unless the accused and his associates file frivolous petitions to protract the trial. Accordingly, the defacto-complainant has prayed for rejection of the instant bail application. Mr. Patwalia further argues that the judicial decisions referred to by the learned counsel of the petitioner are not applicable since in those cases the accused were not responsible for causing delay or protracting the trial.

Court's View:-

6. For proper understanding of the case, we propose to revisit the factual aspects of this case which has been succinctly dealt with by the Hon'ble Supreme Court in the relevant Transfer Petition (Criminal) No. 409 of 2021. The factual matrix narrated as hereunder:-

a. On the date of incident, i.e., 07.10.2019, the Deceased is alleged to have been shot in the neck by 'certain unknown musclemen & goons' when he was working in the office of a political party. The Deceased was immediately rushed to a hospital but was declared dead on arrival. On the next day, the subject FIR was lodged under Section 302 read with Section 120B of the Indian Penal Code, 1860 (hereinafter. 'IPC') and, under Sections 25 and 27 of the Arms Act, 1959 against Anisur Rahaman (the petitioner herein and respondent no 2 in the above Transfer petition) at the behest of one Jahar Sha (hereinafter, 'De-facto Complainant'), who is stated to be the Deceased's nephew and an eyewitness to the alleged occurrence.

b. After investigation, the police authorities concluded that other accused were also involved in the offence, along with Anisur. A chargesheet was submitted against the said individuals along with a list of 107 witnesses, including the De-facto Complainant and Afzal Ali Shah, brother of the deceased. It is pertinent to mention that during the investigation, the police

is also said to have recovered some incriminating materials such as firearms, ammunition and certain documents.

c. During the pendency of the trial, the Legal Remembrancer & Ex- Officio Secretary to the Government of West Bengal, the Judicial Department, by an order of the Governor, issued a notification dated 26.02.2021 directing the Public Prosecutor to apply under Section 321 of CrPC and withdraw the criminal proceedings against Anisur and all other accused, subject to the consent of the learned Trial Court. This notification was challenged by the De-facto Complainant before the High Court at Calcutta.

d. Soon thereafter, on 01.03.2021, a newly appointed Public Prosecutor moved an application before the learned Trial Court praying for withdrawal of the prosecution case stating that it was marred with political and personal vendetta. This application was taken up for hearing on the very next day by a Judge who was in charge of the Trial Court, despite the fact that the case was listed for recording evidence on 10.03.2021. The said Judge was reportedly informed about the pending challenge to the notification dated 26.02.2021 at the Calcutta High Court, but regardless thereto, he proceeded to hear the application and allowed the Prosecution to withdraw the case. As a result, Anisur and other accused were acquitted.

e. A learned Single Judge of the High Court set aside the said notification and order, and the accused were taken into custody once again.

f. The De-facto Complainant thereafter submitted an affidavit before the Trial Court expressing his 'no-objection' to the grant of bail to Anisur. Meanwhile, Anisur appealed against the order of the learned Single Judge before a Division Bench, inter alia, on the ground of violation of the principles of audi alteram partem. The Division Bench set aside the order on this ground and remanded the matter for fresh adjudication. Afzal Ali Sha, the brother of the deceased, had also filed an application for impleadment in the proceedings before the Division Bench but the same was closed with liberty to renew the prayer before the Single Judge.

g. Meanwhile the trial proceeded but during his cross-examination, the De-facto Complainant is stated to have resiled from the statement made during examination-in-chief but nevertheless he was not declared hostile by the Public Prosecutor. Thereafter, the said Afzal Ali Sha filed an application before the Trial Court to declare the De-facto Complainant hostile and to allow his lawyer to cross-examine him. The Trial Court considered the said application and noted that the De-facto Complainant had "made some statements in his cross examination, which are not in conformity with the version of his examination-in-chief". Afzal Ali Sha's application was,

however, rejected after appreciation of the statutory provisions and the case law.

h. Meanwhile, the Transfer Petition was filed before the Hon'ble Supreme Court praying for transfer of the case to the State of Assam from the State of West Bengal and the Hon'ble Court vide order dated 05.10.2021 directed stay on further proceedings in the trial.

7. However, ultimately the Hon'ble Supreme Court refused to allow transfer the relevant case from the State of West Bengal to State of Assam on the grounds, inter alia, that most of the witnesses are Bengali speaking and if the transfer of trial to any other State is done then it will cause serious impediment in the deposition of those witnesses and some of them might be reluctant to travel to faraway place and thus the case of the prosecution will be severely prejudiced. As the High Court at Calcutta and District Judiciary are ensuring the fairness in the trial proceeding within their jurisdictional framework, the relevant criminal trial was order to be transferred from the court of Additional Sessions Judge 3rd Court, Tamluk, Purba Medinipur, West Bengal to the Court of Chief Judge, City Sessions Court, Kolkata with the following directions.

(i) Criminal Trial bearing ST No. 1 (03) of 2020 arising out of FIR No. 495/2019 registered at Police Station Panskura, District Purba Medinipur is

ordered to be transferred from the Court of Additional Sessions Judge. 3rd Court, Tamluk, Purba Medinipur, West Bengal to the Court of Chief Judge, City Sessions Court at Calcutta.

(ii) The trial shall be conducted by the Chief Judge, City Sessions Court, Calcutta and he shall not entrust the case to any other Additional Sessions Judge.

(iii) The Chief Judge, City Sessions Court shall endeavour to take up the trial on a weekly basis and shall make an effort to conclude the same within a period of six months.

(iv) The State of West Bengal is directed to appoint a Special Public Prosecutor on the recommendations of the Chief Judge, City Sessions Court, Calcutta with the prior approval of the High Court. This exercise shall be completed within two weeks.

(v) The wife of the Deceased, the Petitioner and other crucial prosecution witnesses shall be provided adequate security. The State of West Bengal is directed to ensure that no harm is caused to the life and liberty of the witnesses and no direct or indirect attempt is made by Anisur or his co-accused persons or anyone on their behalf to influence, frighten or threaten the witnesses.

(vi) The De-facto Complainant who is also stated to be the eye- witness and has allegedly resiled from his version recorded during the examination-in-chief, shall be subjected to cross- examination by the Special Public Prosecutor, for which the advocate engaged by the Petitioner may provide assistance to the learned Special Public Prosecutor.

(vii) Anisur or any other accused who are in custody shall be transferred forthwith to the Central Jail at Calcutta.

(viii) Anisur, having regard to his criminal antecedents, as well as other accused who are in custody, shall not be enlarged on bail till the conclusion of trial save and except by the High Court.

(ix) The Learned Portfolio Judge of the Calcutta High Court is requested to regularly monitor and supervise the trial proceedings in terms of the directions issued hereinabove.

8. It appears from the record that 74 witnesses have been examined. Though a good number of witnesses have turned hostile, it cannot be said at this stage that there is no incriminating material against the present petitioner. The judicial orders passed by the Learned Chief Judge City Sessions Court, Calcutta show that there are observations of the Learned Trial Judge that the petitioner and other accused are filing frivolous

applications to protract the trial. The materials on record show that the petitioner has criminal antecedents and further he is an influential person having connection with political parties and the administration. If the petitioner is enlarged on bail there are serious chances of tampering with evidence, intimidating vulnerable witnesses, and the same cannot be checked and resisted since there is an allegation that some sections of the State instrumentalities are supporting the cause of the petitioner. This observation is not an empty formality but such observation has a certain basis. The Hon'ble Supreme Court while refusing the transfer of the relevant case from State of West Bengal to State of Assam has categorically mentioned in the following manner:-

“v. The wife of the Deceased, the Petitioner and other crucial prosecution witnesses shall be provided adequate security. The State of West Bengal is directed to ensure that no harm is caused to the life and liberty of the witnesses and no direct or indirect attempt is made by Respondent No. 2 (Anisur Rahaman) or his co-accused persons or anyone on their behalf to influence, frighten or threaten the witnesses.”

9. The Hon'ble Supreme Court's observations indicate that there are chances of the present petitioner Anisur Rahaman or his co-accused making

direct or indirect attempt to cause harm to the wife of the deceased and other crucial prosecution witnesses and for which the State of West Bengal has been directed to ensure that life and liberty of those witnesses remain secure. This observation of the Hon'ble Supreme Court is fatal to the petitioner's bail prayer since neither in the case of Manish Sisodia nor in the case of Anubrata Mondal nor in Jalaluddin Khan, the Hon'ble Supreme Court expressed such apprehension from the part of the concerned accused of the petition.

10. Moreover, the criminal antecedents of the present petitioner outnumber the concerned petitioners of the cited decisions. After going through the orders of the learned Trial Judge, we cannot say that the petitioner and the other accused person did not cause any delay to the trial. Therefore, the present case stands on a different footing from those of the cited decisions. It is often said that bail is the rule, jail is the exception and in our view, this case is the said exception to the general rule which favours granting bail to the accused persons on the ground of delay. We cannot lose sight of the fact that the Special Public Prosecutor, appointed pursuant to the direction of the Hon'ble Apex Court, expressed before us in open court that he is not getting requisite assistance from the State in proceeding with the trial. Therefore, the allegation of Mr. Patwalia that the Petitioner Anisur and State are on the same boat, cannot be ruled out at this stage.

11. As the trial has reached its fag end and we are told that only 16 witnesses are to be examined on day to day basis, we think that bail should not be granted to the present petitioner at this stage, since there is a chance of tampering with vital evidences on the part of the present petitioner, if released on bail. However, it is reported that some witnesses are not appearing before the learned Trial Judge in spite of receiving summons. We think, the Learned Trial Judge has been equipped to deal with such a situation and it is expected that the Trial Judge in such a situation should invoke coercive steps against such recalcitrant witnesses for commission of offence punishable under Section 174 of Indian Penal Code.

12. In fine, we are not inclined to allow the prayer of the petitioner at this stage. The bail petition stands rejected.

13. The Learned Registrar General is requested to communicate this order to the Learned Trial Judge i.e. Learned Court of Chief Judge, City Sessions Court, Kolkata immediately.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

Arijit Banerjee, J.: -

1. I have had the advantage of reading the detailed judgment authored by my learned Brother. I agree with the conclusion that this is an exceptional case where bail may not be granted to the petitioner in spite of the petitioner having been in incarceration for more than 5 years.

2. I am conscious of the fundamental right to personal liberty and speedy trial that every under trial person has. Indeed, if the State does not have the wherewithal for ensuring an early conclusion of a criminal trial, the State should not oppose the accused person's prayer for bail. If there is delay in progress of trial for which the accused person is not responsible, that would be a good ground for granting bail to him on the touch stone of Article 21 of the Constitution.

3. However, in the present case, I do not find that there is any delay in progress of the trial. 74 witnesses have already been examined. It was submitted on behalf of the prosecution that 16 more witnesses would be examined. The trial is being conducted on a day to day basis by the learned Chief Judge, City Sessions Court, Kolkata. It is not that the petitioner is languishing in judicial custody without there being any progress in the trial. There are more than 100 charge sheet named witnesses. There are voluminous documents on which the prosecution relies. I do not find any laches on the part of the prosecution. One cannot complain of delay if the trial becomes a lengthy process because of the nature of the charges, the

number of witnesses required to be examined and the number of documents needed to be exhibited.

4. Furthermore, I have seen from the records that the petitioner has been filing one application after another, most of which are meritless and are contributing to prolongation of the trial.

5. On an overall assessment of the prima facie incriminating material on record, and the fact that the trial is progressing in right earnest and there is no delay caused by the prosecution or systemic delay, I agree with the conclusion reached by my learned Brother.

6. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)

I Agree.

(APURBA SINHA RAY, J.)