

21.06.2024

Item No.01

Ct.No.34

Ap.

Allowed

C.R.M. (SB) 62 of 2024

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Cossipore Police Station Case No. 02 of 2024 dated 01.01.2024 corresponding to G.R.Case No. 03 of 2024 under Sections 25(1)(a)/29 of the Arms Act and Chargesheet submitted under Sections 25 (1B) (a) of the Arms Act.

And

In Re : **Madhab Das @ Napa**

... Petitioner.

With

In Re: **Debashis Mondal @ Debasish Mondal**

... Applicant.

Mr. Angshuman Chakraborty
Mr. Shashanka Shekhar Saha
Mr. S. Sarkar

... For the Petitioner.

Mr. Arijit Ganguly
Mr. Bikram Mitra

... For the State.

Mr. Uday Shankar Bhattacharyya
Dr. B.P. Dutta
Mr. Mritunjay Saha
Mr. Dilip Kumar Mondal

...For the Applicant.

The petitioner is in custody since 1st January, 2024.

Charge sheet has been submitted in his case. The fire arm has been seized. The petitioner seeks bail.

The State produces the case diary.

The applicant/intervenor has filed applications being CRAN 1 of 2024 and CRAN 2 of 2024 under Section 2 (wa) of the Code of Criminal Procedure read with Section 44 of the Indian Penal Code and has opposed the prayer for bail on several counts.

Learned counsel for the applicant has submitted that the petitioner has suppressed pendency of an application being CAN 1 of 2024 filed by the wife of the petitioner in a Public Interest Litigation being WPA (P) 22 of 2024 seeking consideration of the bail application on merits.

Learned counsel has further submitted that in an order passed on 8th February, 2024 in Public Interest Litigation filed by the applicant, the Hon'ble Division Bench has called for affidavits from the appropriate authority of the National Investigation Agency and the State Government in order to deal with the matter. According to learned counsel, since the Public Interest Litigation pertains to the issue of trading of fire arms of foreign origin within the State of West Bengal and offences registered for the same, granting bail to the petitioner shall frustrate the very purpose of the Public Interest Litigation since the petitioner has been found dealing in fire arms of foreign origin.

Learned counsel has placed reliance in the authorities in R. Rathinam v/s. State by Dsp, District Crime Branch reported in (2000) 2 SCC 391, Mani Prasad Singh v/s. The State of West Bengal & Anr. reported in 2016 SCC Online Cal 578 and Gurwinder Singh v/s. State of Punjab & Anr. reported in Criminal Appeal No. 704 of 2024 in support of his contention.

I have considered the rival contention of the parties and material on record.

The authority in Gurwinder Singh (supra) deals with offence under The Unlawful Activities (Prevention) Act,

besides other offences. In the present case, charge sheet has been submitted against the petitioner under Sections 25 (1B) (a) of the Arms Act. By the said judgment, bail prayer of the accused was rejected on the ground that material on record prima facie indicated the complicity of the accused as a part of the conspiracy since he was knowingly facilitating the commission of a preparatory act towards commission of Terrorist Act under Section 18 of the UAP Act. Therefore the ratio of the judgment can be distinguished from the fact situation of the present case.

The authorities in Mani Prasad Singh (supra) and R. Rathinam (supra) deal with the applications made by the petitioners therein for cancellation of bail as members of the public on account of their being aggrieved/affected by the bail orders.

Learned counsel for the petitioner has submitted that the application being CAN 1 of 2024 which was filed by the wife of the petitioner before the Hon'ble Division Bench has been withdrawn.

The Public Interest Litigation has been filed on a wide spectrum to curb illegal trading of fire arms of foreign origin within the State of West Bengal. The issue before the Hon'ble Court was with regard to the appropriate authority who could deal with such serious matters. For the purpose, the Hon'ble Division Bench was pleased to call for affidavits from the National Investigation Agency as well as the State Government so that appropriate order could be passed as to

who would be the competent authority to deal with the investigation of such serious offences.

In the case in hand, the petitioner is in custody since 1st January, 2024. Charge sheet has been submitted. The fire arm has been recovered. Further detention of the petitioner is not required for the purpose of custodial interrogation.

Grant of bail to the petitioner on stringent conditions shall in no manner prejudice the cause of the applicant in the Public Interest Litigation. Incarceration of the petitioner in the present case shall be violative of the Article 21 of the Constitution of India.

Accordingly prayer for bail is allowed

The petitioner shall be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten Thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Sealdah, subject to condition that the petitioner shall appear before the learned trial Court on every date of hearing fixed before the Court and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the trial court 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.

The Case Diary is returned.

The application for bail, being CRM (SB) 62 of 2024, is, thus, disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)