

26.06.2024
Item no. 52.
Court No.28.
AB
(Rejected)

CRM (DB) 1851 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Beliaghata P. S. Case No.5 of 2022 dated 22.1.2022 under Sections 394/395/397/307 120B of the Indian Penal Code read with Section 25(1B)(a)/27 of the Arms Act

And

In the matter of : Rup Bahadur Magar @ Sanki @ Rabin

.....Petitioner.

Mr. Simanta Kabir,
Mr. Avik Pramanikfor the Petitioner.

Mr. Madhusudan Sur, ld. APP
Mr. Dipankar Pramanikfor the State.

Mr. Souvik Mitter,
Mr. Sourav Chatterjee,
Mr. Antarikhya Basu,
Mr. Phiroze Edulji,
Mr. Sandip Chakraborty,
Mr. Anirban Guha Thakurtha,
Mr. Anirban Dutta,
Ms. Madhumita Basak
.....for the Defacto complainant.

The petitioner is one of several accused persons. The charge is of dacoity.

The petitioner says that he is in custody for about two years and six months. 72 witnesses have been named in the charge sheet. 3 Witnesses have been examined so far. The last schedule for examination of witnesses was fixed on June 18, 2024. No witness was examined on that date. His fundamental

right to personal liberty and right to speedy trial are being infringed. He should be immediately enlarged on bail.

Learned Advocate refers to an order of the Hon'ble Supreme Court dated May 16, 2024, passed in Criminal Appeal No.2666 of 2024 at the instance of a co-accused person. The Hon'ble Supreme Court enlarged that person on bail considering the period of incarceration and other facts, which were peculiar. One of the facts placed before the Hon'ble Supreme Court, as we read it, is that there is a background of matrimonial dispute between the appellant before the Supreme Court and the sister of the first informant.

Learned Advocate for the State and learned Advocates for the defacto complainant strongly oppose the prayer for bail. Learned Advocate for the State says that at the highest 22 to 24 witnesses will be examined. 3 witnesses have already been examined.

Our attention is drawn to the material in the case diary. There are eyewitnesses naming this petitioner as having participated in the alleged offence. This petitioner has been identified in TI Parade. There was also recovery from this petitioner.

Therefore, on an overall consideration of the gravity of the charge and the material on record, which prima facie incriminate the petitioner, we are not inclined to allow the prayer of the petitioner for bail, at this stage.

The prayer for bail is, accordingly, rejected.

CRM (DB) 1851 of 2024 is dismissed.

In our considered view, this petitioner does not stand on the same footing as the co-accused, who was granted bail by the Hon'ble Supreme Court.

However, we cannot lose sight of the fact that a citizen's right to personal liberty is a fundamental right recognized by Article 21 of the Constitution of India. The petitioner has been in long incarceration. We direct the learned Trial Court to expedite the trial to the fullest extent and bring the same to its logical conclusion as early as possible but definitely within a period of one year from the next date fixed for recording of evidence, without granting any unnecessary adjournment to either of the parties. The parties shall fully cooperate with the learned Trial Court to complete the hearing within the time period as indicated above.

We clarify that in the event the trial is not concluded within the time period indicated above, the petitioner will be at liberty to renew his prayer for bail.

The parties shall communicate this order to the learned Trial Court.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)

