

11.07.2024
Item no.63.
Court No.28.
S. De
(Allowed)

CRM (DB) No. 2040 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure in connection with Asansol North Police Station Case No. 395 of 2017 dated 10.12.2017 under Sections 363/365/376(2)(i)/302/201/120B of the Indian Penal Code and under Section 4/6 Protection of Children from Sexual Offences Act.

And

In the matter of : Md. Sarfaraj @ Md. Sarfaraz @

Sheru.

.....Petitioner.

Mr. Ayan Basu,
Sk. Selim,
Mr. Sumit Rough,

.....for the Petitioner.

Mr. Bibwasan Bhattacharyya,
Mr. Atanu Ghosh,

.....for the State.

Mr. Avik Ghatak,
Mr. Abhinav Rakshit,

...for the de facto complainant.

The petitioner renews his prayer for bail which was lastly rejected on June 24, 2022. He says that he is in custody for almost 6 years 7 months. As of now, 12 out of 30 charge-sheet named witnesses have been examined. It is anybody's guess as to when the trial will conclude. He prays for bail on the ground of delay in progress of the trial.

Learned advocates for the State and the de facto complainant strongly oppose the prayer for bail. They say that the alleged offence is serious. It is gruesome. A 9-year old girl

was raped and killed and then her head was smashed. There is sufficient incriminating evidence against the petitioner. They also say that one of the principal witnesses is yet to be examined. In view of that, the petitioner's prayer should be rejected.

It is obviously in public interest that a criminal, who is convicted, is meted out appropriate punishment. However, an undertrial cannot be kept in incarceration for an unduly long period of time on the pretext that trial is still pending. 6 years 7 months is a very long period of time. Only 12 out of 30 charge-sheet named witnesses have been examined. There is little possibility of the trial coming to an early conclusion. It is now fairly well established that a citizen's right to personal liberty and speedy trial is a fundamental right enshrined in Article 21 of the Constitution of India. Such fundamental right would override all other considerations. In view of the prolonged detention of the petitioner, we are inclined to enlarge him on bail only on the ground of inordinate delay in the progress of trial.

Accordingly, we direct that the petitioner namely **Md. Sarfaraj @ Md. Sarfaraz @ Sheru** shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court under Protection of Children from Sexual Offences Act, Asansol, Paschim Burdwan and on further conditions that he shall remain within the jurisdiction of the concerned police station and on further condition that since

the principal witness, namely, Md. Raja is yet to be examined and he resides in Asansol, the petitioner shall not enter the district of Paschim Burdwan until further orders.

The petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence and/or commit any cognizable offence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this Court.

The application for bail is, accordingly, allowed.

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.)