

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

APPELLATE SIDE

**In re: An application for Bail under Section 439 of the Code of
Criminal Procedure, 1973.**

**CRM (DB) 173 of 2024
(Under RC-03A/2022)**

**In the matter of : Dr. Subires Bhattacharya @ Subiresh Bhattacharjee
V.**

The Central Bureau of Investigation

**CRM (DB) 172 of 2024
(Under RC-05A/2022)**

**In the matter of : Dr. Subires Bhattacharya @ Subiresh
Bhattacharjee**

V.

The Central Bureau of Investigation

**CRM (DB) 427 of 2024
(Under RC-03A/2022)**

**In the matter of : Ashok Kumar Saha
V.**

The Central Bureau of Investigation

**CRM (DB) 418 of 2024
(Under RC-05A/2022)**

**In the matter of : Ashok Kumar Saha
V.**

The Central Bureau of Investigation

**CRM (DB) 467 of 2024
(Under RC-03A/2022)**

**In the matter of : Kalyanmoy Ganguly
V.**

The Central Bureau of Investigation

**CRM (DB) 481 of 2024
(Under RC-03A/2022)**

**In the matter of : Koushik Ghosh
V.**

The Superintendent, The Central Bureau of Investigation

CRM (DB) 248 of 2024
(Under RC-03A/2022)
In the matter of : Sk. Ali Imam & Md. Sahid Imam.
V.
The Superintendent, The Central Bureau of Investigation

CRM (DB) 823 of 2024
(Under RC-03A/2022)
In the matter of : Santi Prasad Sinha
V.
The Central Bureau of Investigation

CRM (DB) 818 of 2024
(Under RC-04A/2022)
In the matter of : Santi Prasad Sinha
V.
The Central Bureau of Investigation

CRM (DB) 822 of 2024
(Under RC-05A/2022)
In the matter of : Santi Prasad Sinha
V.
The Central Bureau of Investigation

CRM (DB) 2564 of 2024
(Under RC-03A/2022)
In the matter of : Subrata Samanta Roy @ Babu
V.
The Superintendent, The Central Bureau of Investigation

CRM (DB) 2562 of 2024
(Under RC-02A/2022)
In the matter of : Subrata Samanta Roy @ Babu
V.
The Superintendent, The Central Bureau of Investigation

CRM (DB) 583 of 2024
(Under RC-05A/2022)
In the matter of : Partha Chatterjee
V.
The Central Bureau of Investigation

CRM (DB) 2543 of 2024
(Under RC-05A/2022)
In the matter of : Chandan Mondal @ Ranjan
V.
The Superintendent, The Central Bureau of Investigation

Before: The Hon'ble Justice Arijit Banerjee

The Hon'ble Justice Apurba Sinha Ray

For the petitioners (CRM (DB)/173/24, CRM (DB)/467/24 & CRM (DB)/172/24)	:	Mr. Sandipan Ganguly, Sr. Adv. Mrs. Manaswita Mukherjee, Adv.
For the Petitioners (CRM (DB)/427/24)	:	Mr. Rajat Sinha Roy, Adv. Mr. Surajit Basu, Adv.
For the Petitioners (CRM (DB)/481/24, CRM (DB)/248/24, CRM (DB)/2564/24, CRM (DB)/ 2562/24, CRM (DB)/2543/24)	:	Mr. Anirban Guhathakrta, Adv. Mr. Sujan Chatterjee, Adv. Mrs. Nayana Mitter, Adv. Mr. Souparna Sinha, Adv. Mr. Rohan Bavishi, Adv. Mr. Debdoot Bhattacharyya, Adv.
For the Petitioners in (CRM (DB)/823/24, CRM (DB)/818/24 & CRM (DB)/822/24)	:	Mr. Milon Mukherjee, Sr. Adv., Mr. Biswajit Manna, Adv. Mr. Subhadeep Ghosh, Adv.
For the Petitioner (in CRM (DB)/583/24)	:	Mr. Milon Mukherjee, Sr. Adv., Mr. Sandipan Ganguly, Sr. Adv., Mr. Ayan Poddar, Adv. Ms. Manaswita Mukherjee, Adv. Mr. Soham Dutta, Adv.
For the Petitioners (in CRM (DB)/418/24)	:	Mr. Sekhar Kumar Bose, Sr. Adv., Mr. Rajat Sinha Roy, Adv. Mr. Surajit Basu, Adv.
For C.B.I. in all the matters	:	Mr. Dhiraj Trivedi, learned DSGI, Mr. Amajit De, Special PP, CBI, Mr. Arijit Majumdar, Adv. Ms. Supriti Sarkhel, Adv.
CAV On	:	07.10.2024
Judgment On	:	20.11.2024

Arijit Banerjee, J.: -

1. These 14 bail applications have common factual background. Therefore, the applications were taken up for hearing together. Before addressing each

application individually, it may be helpful to dilate briefly on the object of bail and the principles governing grant of bail.

2. The Code of Criminal Procedure does not define the word “bail”. Black’s Law Dictionary, 4th Edition, defines bail as security for the appearance of an accused person, on furnishing which he is released from custody pending trial or investigation. The object of bail is to procure the release of a person from legal custody by undertaking that he/she shall appear at the time and place designated and submit himself/herself to the jurisdiction and judgment of the Court.

3. Bail jurisprudence pertains to the laws, rules and judicial decisions governing the release of an accused person from judicial custody pending trial or investigation. It encompasses an under-trial person’s right to liberty, the presumption of innocence and fair trial while keeping in mind the State’s interest in ensuring administration of justice and preventing potential harm to the society. Bail jurisprudence ensures that an individual is not unnecessarily detained in judicial custody if he does not pose flight risk or danger to the society at large, pending trial. It strikes a balance between protecting public safety and ensuring that the rights of the accused person are respected.

4. From very early times, it has been held by the Courts that the object of bail is neither punitive nor preventive. The object is to secure the appearance of the accused person at his trial. Deprivation of liberty must be considered to be a punishment unless the same is required to ensure that an accused person will attend his trial. Every person is presumed to be innocent until proved

guilty following due process of law. One cannot punish an accused person before he is convicted. Unless it is found by the Courts that an accused person is unlikely to attend his trial if set at large, bail should not be denied to a person who is in judicial custody. Bail has always been and still is the rule. Jail has been and still is the exception. In our country it would be wholly contrary to the concept of personal liberty enshrined in Article 21 of our Constitution that any person should be punished in respect of a matter in which he has not been convicted as yet. Any imprisonment before conviction has a punitive element and it would be improper for any Court to refuse bail as mark of disapproval of former conduct of the accused irrespective of whether or not he has been convicted for it or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. In this connection one may refer to the decision of the Hon'ble Supreme Court in the case of ***Sanjay Chandra v. Central Bureau of Investigation, AIR 2012 SC 830.***

5. In the decision of the Hon'ble Apex Court referred to above, two other things were also held. Firstly, seriousness of the offence alleged should not be treated as the only ground for refusal of bail. Secondly, if bail is refused to an accused person under Sections 437 or 439 of the Cr.P.C. and he is detained in judicial custody for an indefinite period of time because his trial is taking considerable time, the same would be violative of his fundamental right to personal liberty guaranteed by Article 21 of the Constitution. In other words, if a trial is prolonged for no fault of the accused person, on the ground of

inordinate delay in completion of the trial, bail should be granted to that person on the touch- stone of Article 21 of the Constitution which guarantees personal liberty and also contemplates a citizen's right to speedy trial/justice.

In ***Unnikrishnan J. P. & Ors. v. State of A. P. & Ors., reported at AIR 1993 SC 2178***, the Hon'ble Supreme Court enumerated the rights under Article 21 of the Constitution which should be treated as rights to personal liberty. Such rights include the right to speedy trial.

6. The fundamental principle of our criminal jurisprudence is that a person shall not be deprived of his liberty, except for having committed a clear breach of law. If there is no real risk of an accused person fleeing from the course of justice or influencing the trial, there is no reason why he should be kept incarcerated in a correctional home during the period of his trial. The basic rule always was and still is to release such a person on bail unless of course, there are clear circumstances suggesting the possibility of the person disappearing or thwarting the course of justice. Various decisions of the Hon'ble Supreme Court have held that when bail is refused, it is a restriction of personal liberty of the individual guaranteed by Article 21 of the Constitution and therefore, such refusal must be rare. In this connection, one may refer to the decisions in the cases of ***State of Rajasthan v. Balchand, AIR 1977 SC 2447*** and ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of A.P., AIR 1978 SC 429***.

7. Apart from ***Unnikrishnan's*** case referred to above, some other decisions in which the Hon'ble Supreme Court has declared that speedy trial of a case of

an under-trial prisoner is his fundamental right under Article 21 of the Constitution as follows:-

(i) Babubhai Bhimabhai Bokhiria & Anr. v. State of Gujarat & Ors., (2013) 9 SCC 500.

(ii) Vakil Prasad Singh v. State of Bihar, (2009) 3 SCC 355.

(iii) A. R. Antulay v. R.S. Nayak & Anr., AIR 1992 SC 1701.

(iv) Kadra Pehadiya & Ors. v. State of Bihar, AIR 1981 SC 939.

(v) Hussainara Khatoon v. State of Bihar, AIR 1976 SC 1360.

8. In this connection one may also note that a Constitution Bench of the Hon'ble Apex Court in the case of **P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 (a seven Judge Bench)** has laid down that although speedy trial is a fundamental right of an accused/under trial under Article 21 of the Constitution, yet, courts cannot prescribe any specific time limit for the conclusion of a criminal trial. In a recent decision in the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra and Anr., reported at 2024 SCC OnLine SC 1693**, the Hon'ble Supreme Court observed that if the State or any prosecuting agency, including the Court concerned, do not have the wherewithal to protect the fundamental right of an accused to have a speedy trial as enshrined in Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime. The Hon'ble Apex Court further

observed as follows:- “We wonder by what period of time the trial would ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India. 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.” It was further observed that refusal to grant bail is an unjust punishment leading to “prisonisation” of an accused, who is presumed to be innocent until proven guilty.

9. In an Article captioned “An Analytical Study of Bail Jurisprudence and the Discretionary Power of Court Relating to Bail in India”, published in Volume 4 Issue 2 of the International Journal of Humanities, Social Science and Management, the joint Authors of the Article have noted that by allowing the accused to be released on bail, bail jurisprudence contributes to the efficient functioning of the legal system. It reduces overcrowding in prisons, minimizes delays in trial proceedings and enables the accused persons to participate effectively in their defense. In the same article, the Authors have opined that the following are the factors which a Court should take into account in exercising its discretion judiciously while hearing a bail application:-

- (i) Nature and gravity of the offence: offences involving violence, economic crimes or threats to national security may warrant stricter scrutiny.
- (ii) Evidence and prima facie case.
- (iii) Flight risk.

(iv) Criminal history.

(v) Victim's rights and public safety.

(vi) Special circumstances like medical conditions age, family responsibilities and cooperation with law enforcement.

10. Bail should not be denied as a form of punishment prior to conviction. One must remember that unless guilt is proven, there remains a presumption of innocence under criminal law. The guilt must be established beyond reasonable doubt. Denial of bail also affects the right of an accused person to a fair trial since he has very limited contact with his lawyers and that too, in a tightly restricted environment. A person on bail has a greater opportunity for preparing or presenting his case than one who is detained in judicial custody. As was observed by **Justice Krishna Iyer** and quoted in ***Aero Traders(p) Limited v. Ravinder kumar Suri, reported at (2004) 8 SCC 307***, mechanical detention should be reduced if public justice is to be promoted. In several decisions, the Hon'ble Supreme Court has laid down the considerations for grant or refusal of bail to an accused in the case of a non-bailable offence. They are :-

- (1) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence.
- (2) Nature of accusation and evidence therefor.
- (3) Gravity of the offence and punishment which the conviction will entail.

- (4) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail.
- (5) Character and behavior of the accused.
- (6) Means, position and standing of the accused in the society.
- (7) Likelihood of the offence being repeated.
- (8) Reasonable apprehension of the witnesses being tampered with
- (9) Danger, of course, of justice being thwarted by grant of bail.
- (10) Balance between the rights of the accused and the larger interest of the society/State
- (11) Any other factor relevant and peculiar to the accused.
- (12) While a vague allegation that the accused may tamper with evidence or witness may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with evidence, then bail will be refused.

In this connection one may refer to the following decisions of the Hon'ble Apex Court

- a) ***Sanghian Pandian Rajkumar v. CBI & Anr., (2014) 12 SCC 23.***
- b) ***Nimmagadda Prasad v. CBI, (2013) 7 SCC 466.***
- c) ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, AIR 2013 SC 1933.***
- d) ***Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446.***

- e) ***Dipak Shubhashchandra Mehta v. CBI, AIR 2012 SC 949.***
- f) ***Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189.***
- g) ***Gokul Bhagaji Patil v. State of Maharashtra, (2007) 2 SCC 475.***
- h) ***Anil Kumar Tulsyani v. State of U.P. & Anr., (2006) 9 SCC 425.***
- i) ***State of U.P. Through CBI v. Amarmani Tripathi, (2005) 8 SCC 21.***
- j) ***Surinder Singh v. State of Punjab & Ors., (2005) 7 SCC 387.***
- k) ***Panchanan Misra v. Digambar Misra & Ors., (2005) 3 SCC 143.***
- l) ***Chamanlal v. State of U.P., (2004) 7 SCC 525.***
- m) ***State of Gujarat v. Salimbhai Abdul Gaffar, (2003) 8 SCC 50.***
- n) ***Mansab Ali v. Irsan, (2003) 1 SCC 632.***

11. In the present case, the accused persons have all been arraigned in connection with what has come to be known as the School Service Commission (SCC) scam. Basically, the allegation is that the accused persons collected huge sums of money by promising jobs as teachers to various persons, who were not entitled to such appointments. The Central Bureau of Investigation (CBI) has registered diverse Regular Cases (RC) against the accused persons including the petitioners in the bail applications under consideration.

12. Before taking up the bail applications individually, I would like to note certain observations in four recent judgments of the Hon'ble Supreme Court.

13. In criminal Appeal no. 003166 of 2024 arising out of SLP (Criminal) No. 12769 of 2023 (**Anubrata Mondal @ Kesto v. The Central Bureau of Investigation & Anr.**), the charge against the appellant was under Section 420 IPC read with Sections 7,9,12,13(2) and 13(1) (d) of the Prevention of Corruption Act, 1988. He was taken into custody on August 11, 2022. He failed to obtain bail before the learned Trial Court or the High Court. By a judgment and order dated July 30, 2024, the Hon'ble Supreme Court granted bail to the appellant, observing inter alia as follows:-

“5. 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.”

14. In Criminal Appeal no. 003295 of 2024 arising out of SLP (Criminal) No. 8781 of 2024. (***Manish Sisodia vs. Directorate of Enforcement***), charge sheet was filed against the appellant under Sections 7, 7A, 8 and 12 of the Prevention of Corruption Act, 1988 read with Sections 420, 201 and 120B of the IPC. The appellant was unsuccessful in obtaining bail from the Delhi High Court. The Hon’ble Supreme Court allowed the appeal of the appellant and granted him bail, inter alia, observing as follows:-

“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.

55. As observed by this Court in the case of ***Gudikanti Narasimhulu (supra)***, the objective to keep a person in judicial

custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.”

15. In ***Jalaluddin Khan v. Union of India, (Criminal Appeal no. 3173 of 2024)***, the charge against the appellant was under Sections 121, 121A and 122 of the Indian Penal Code read with Sections 13, 18, 18A and 20 of the Unlawful Activities (Prevention) Act, 1967. The Special Court under the UAPA as well as the High Court rejected the appellant’s prayer for bail. By its judgment and order dated August 13, 2024, while granting bail to the appellant, the Hon’ble Supreme Court in paragraph 21 of the Judgment, observed as follows:-

“21. 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.”

16. In ***V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, 2024 SCC OnLine SC 2626***, the allegation against the appellant was basically that while discharging his duties as Transport Minister of Tamil Nadu, in connivance with his personal assistant and his brother, he collected large sums of money by promising job opportunities to several persons in various positions in the Transport Department. This led to the registering of three First

Information Reports against the appellant and others, under various Sections of Indian Penal Code and Prevention of Corruption Act, 1988. Since the offences alleged were scheduled offences within the meaning of Section 2(y) of the Prevention of Money Laundering Act, 2002 (in short 'PMLA'), relying on the final reports filed in respect of the scheduled offences, the Enforcement Directorate registered an Enforcement Case Information Report for the offence of Money Laundering under section 3 of the PMLA. The appellant was arrested. After some time, he applied for bail. The Madras High Court rejected the bail application. The Hon'ble Supreme Court allowed the appeal and granted bail to the accused noting that the accused was in custody for 15 months. In the judgment, the Hon'ble Supreme Court made, inter alia, the following observations:-

“22. In the case of K.A. Najeeb², in paragraph 17 this Court held thus:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised.

Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where

there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

(emphasis added)

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24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’). The provisions regarding bail in some of such statutes start with a non obstante clause for overriding the provisions of Sections 437 to 439 of the Cr.PC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

26. There are a series of decisions of this Court starting from the decision in the case of K.A. Najeeb², which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions,

incarceration of an under-trial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.

* * *

28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an under-trial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.”

17. Now I will take up the bail application(s) of each of the petitioners, one by one.

In Re: Dr. Subires Bhattacharya @ Subiresh Bhattacharjee, CRM (DB) No. 173 of 2024 (arising out of RC no. 03A of 2022)

and

In Re: Dr. Subires Bhattacharya @ Subiresh Bhattacharjee, CRM (DB) No. 172 of 2024 (arising out of RC no. 05A of 2022)

18. In CRM (DB) No.173 of 2024 the petitioner seeks bail in connection with RC no. 3 of 2022. In CRM(DB) No. 172 of 2024 the petitioner seeks bail in connection with RC no. 5 of 2022.

19. Learned Counsel for the petitioner submitted that the petitioner was arrested on September 19, 2022, in connection with RC 3 of 2022. Although he was not named in the First Information Report, he was formally shown as an accused person in the Charge Sheet dated October 21, 2022, under Sections 120B/109//467/468/471 of IPC read with Sections 7/7A/8 of the Prevention of Corruption Act, 1988. Supplementary charge sheet dated March 15, 2023 was filed by CBI against 9 accused persons including this petitioner, under Sections 120B/201/420/467/468/471 of the IPC read with Sections 7 and 8 of the Prevention of Corruption Act, 1988. The petitioner was shown arrested in connection with RC 5 of 2022 on December 16, 2022.

20. The petitioner was the Chairman of the West Bengal Central School Service Commission (in short WBCSSC) and was also the Chairman-in-charge of the Southern Regional Office of WBCSSC. He resigned from the post of Chairman of WBCSSC in May, 2018 and joined the post of Vice-Chancellor in North Bengal University.

21. The charges against the petitioner are under Sections 120B/420/109/467/468/471 of IPC and Sections 7/7A/8 of the Prevention of Corruption Act, 1988. He had approached this Court within 90 days of his custodial detention. His prayer for bail was rejected vide order dated December 21, 2022 passed in CRM (DB) no. 4394 of 2022. The petitioner is renewing his prayer for bail.

22. It was submitted on behalf of the petitioner that he is in custody for about 1 year and 10 months. The Hon'ble Supreme Court has enlarged on bail a co-accused person, viz, **Prasanna Kumar Roy @ Rakesh** vide order dated 10.11.2023 passed in Special Leave to Appeal (Crl) No. 12763 of 2023, after he was in judicial custody for 440 days. This Court has enlarged on bail an employee of the said Prasanna Kumar Roy i.e., one **Pradip Singh @ Chotu** vide order dated 8.01.2024 passed in CRM (DB) no. 4647 of 2023, after he had undergone custodial detention for 502 days. The Hon'ble Supreme Court has also enlarged on bail, Jiban Krishna Saha, a Member of the Legislative Assembly, West Bengal by order dated 14.05.2024 passed in SLP (CRL) No. 13090 of 2023, after the said accused person was in judicial custody for 393 days. Learned Counsel submitted that the petitioner is similarly circumstanced as the aforesaid accused persons who have been enlarged on bail.

23. It was submitted that the petitioner has cooperated with the investigation. His residence in Kolkata, his ancestral residence in Agartala and his official residence and office in North Bengal were searched by CBI. Nothing incriminating was recovered therefrom. The allegation of issuing forged

recommendation letters is not against the petitioner. The CBI, till date, has not been able to show any money trail with regard to the petitioner in any of the charge-sheets. He is 64 years old and suffers from various ailments including severe vertigo, combined with vomiting, heavy sweating, low blood pressure and loss of body balance. The trial has not even started. The CBI proposes to examine 135 witnesses and rely on 382 documents as would appear from the relevant charge-sheets. On merits, as also on the ground of delay in trial, the petitioner renewed his prayers for bail.

24. The CBI vehemently opposed the prayer. Learned Counsel for CBI said that there is sufficient incriminating evidence against the petitioner. He was an integral part of the conspiracy to collect large sums of money from unsuspecting persons by promising to them jobs as teachers. He was also instrumental in generating forged appointment letters. CBI is not responsible for the delay in progress of the trial.

25. The State Government has not yet granted sanction for prosecution which is required as regards some of the accused persons. In fact, the State Government has neither granted nor refused to grant such sanction for prosecution. It is sitting tight over the matter. Considering the gravity of the offence alleged, the petitioner's prayer should be rejected.

25A. It was also submitted that further investigation is being conducted pursuant to orders of this Court. It may be necessary to interrogate the petitioner further if fresh incriminating material against the petitioner comes to light.

26. I find from the records that charge is yet to be framed. Some of the accused persons are yet to be apprehended. The State Government is sitting tight over the issue of grant or refusal of sanction to prosecute some of the accused persons to proceed against whom, sanction of the Government is necessary under the law. CBI has also not approached any competent forum for a direction on the State Government to take a decision on the issue of grant or refusal of such sanction. Without such sanction, the trial is unlikely to proceed. Theoretically the trial may be split up against the accused persons. However, given the nature for the offences alleged in the present case, that may not be an appropriate procedure.

27. I also note that co-accused persons have been granted bail by the Hon'ble Supreme Court primarily on the ground of lengthy detention in judicial custody without there being any progress in the trial, as noted above.

28. I do not wish to dilate on the merits of the case or make any observation in that regard. However, I do not find any significant difference between the footing on which this petitioner stands and the footing on which the other accused persons, who have been granted bail, stand. The basic charge against all the accused persons is to hatch a criminal conspiracy to defraud members of the public by meting out false promises of securing jobs for them as teachers against payment of money.

29. Further, I have noted in the general discussion on criminal jurisprudence pertaining to bail that right to speedy trial is now recognised as a fundamental right of an under trial person, under Article 21 of the Constitution of India. If

the State or the Court is not in a position to conclude the trial within a reasonable period of time, an under trial cannot be kept in incarceration for an indefinite period of time in negation of his fundamental right to personal liberty.

30. After all, a fundamental principle of criminal jurisprudence of this country is that a person is presumed to be innocent until proved to be guilty before a competent Court of law following due process. A person cannot be damnified by being detained in judicial custody for days together without being convicted.

31. In the present case, the prosecution may or may not have strong incriminating material against the petitioner. I do not wish to make any comment on that nor is the same necessary. Nobody stands in the way of the prosecution securing the petitioner's conviction by carrying the trial to its logical conclusion in accordance with law and with expedition. In the facts of the present case, however, there does not appear to be any possibility of the trial concluding on an early date. The trial has not even begun. The number of witnesses that the prosecution intends to examine and the number of documents that it proposes to exhibit would itself indicate that there is no likelihood of the trial coming to an end in the near future.

32. The petitioner is a senior citizen. He appears to be suffering from various ailments. There does not seem to be any likelihood of the petitioner fleeing from justice. Investigation is complete. It is not the case of the prosecution that the petitioner is such an influential person that if released on bail, he is likely to tamper with evidence or influence prosecution witnesses. Given the offences

alleged against the petitioner, the evidence against the petitioner would be largely documentary in nature which by now the prosecution would presumably have gathered. In view of the long detention of the petitioner in judicial custody coupled with the fact that the trial has not progressed to any extent, on the touch stone of Article 21 of the Constitution, I am inclined to allow the petitioner's prayer for bail.

32A. In so far as further investigation is concerned, nothing in this judgment and order will stand in the way of CBI conducting the same or interrogating the petitioner further. However, in my opinion, further custodial interrogation of the petitioner is not warranted.

33. Therefore, the accused/petitioner, namely **Dr. Subires Bhattacharya @ Subiresh Bhattacharjee, [CRM (DB) 173 of 2024 (under RC-03A/2022 and CRM (DB) 172 of 2024 (under RC-05A/2022)]** be released on bail (unless he is under arrest in some other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further

orders. Prior to his release on bail, he shall deposit his Passport, if any, to the trial court.

34. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

35. The application for bail, thus, stands **allowed**.

In Re: Sri. Ashok Kumar Saha CRM (DB) No. 418 of 2024 (arising out of RC No. 05A of 2022)

And

In Re: Sri. Ashok Kumar Saha CRM (DB) No. 427 of 2024 (arising out of RC No. 03A of 2022)

36. In CRM (DB) no. 418 of 2024, the petitioner seeks bail in connection with RC 5 of 2022. In CRM (DB) no. 427 of 2024, the petitioner seeks bail in connection with RC 3 of 2022.

37. In connection with RC 5 of 2022, the petitioner was taken into custody on August 10, 2022. In connection with RC 3 of 2022, the petitioner was shown arrested on production on November 29, 2023.

38. Learned Advocate for the petitioner submitted that the petitioner acted as the Assistant Secretary, WBCSSC from October 5, 2015. In RC 3 of 2022, the allegations against the petitioner are under Sections 120B/428 of IPC read with Section 7 of the Prevention of Corruption Act, 1988. In RC 5 of 2022, the allegations against the petitioner are under Sections 417/465/468/34 of IPC read with Section 7 of the Prevention of Corruption Act.

39. It was submitted that the petitioner is 70 years old. He is a retired public servant. Without prior sanction from the State Government, CBI completed the investigation against the petitioner in violation of Section 197 Cr.P.C. and Sections 17A and 19 of Prevention of Corruption Act, 1988. Learned Trial Court has still not taken cognizance of the charge sheet dated September 30, 2022, or the supplementary charge sheets dated March 15, 2023 and July 14, 2023, which implicate the petitioner. Without taking cognizance remanding the petitioner to custody beyond the statutory permissible period is illegal. In this connection reliance was placed on Section 309(2) of Cr.P.C, the material portion whereof reads thus:-

“(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody”

40. It was further submitted that sanction has still not been granted by the State Government. Therefore, learned Trial Court has not taken cognizance of the alleged offence. The petitioner is in custody for more than 2 years. There is no possibility of the trial beginning on an early date, let alone an early conclusion of the trial. On the ground of breach of the petitioner's fundamental

right under Article 21 of the Constitution of India, the petitioner should be enlarged on bail.

41. The CBI strongly opposed the prayer for bail. Learned Counsel for CBI submitted that there is sufficient material implicating the petitioner in the alleged offence of criminal conspiracy to cheat members of the public. The offence alleged is of a grave nature. If the petitioner is granted bail, he is likely to tamper with evidence.

42. I find that the petitioner is in judicial custody for almost 2 years and 3 months. Trial has not begun. In fact cognizance of the alleged offence is yet to be taken by the learned Trial Court. The prosecution intends to examine more than 100 witnesses and proposes to exhibit a large number of documents. CBI has not taken any legal step for obtaining sanction to prosecute the accused persons who are retired public servants. It is anybody's guess as to when the trial will begin or end.

43. By the present judgment and order, I have granted bail to a co-accused person i.e., Dr. Subires Bhattacharya @ Subiresh Bhattacharjee against whom the charges are graver. For the same reasons for which I allowed the bail prayer of Dr. Subires Bhattacharya, I am inclined to allow the instant bail petition. In other words, primarily on the ground of inordinate delay in the progress of the trial and considering that this petitioner stands on a better footing than Dr. Subires Bhattacharya who has been enlarged on bail, I allow this application.

44. Therefore, the accused/petitioner, namely, **Sri. Ashok Kumar Saha [CRM (DB) No. 418 of 2024 arising out of RC No. 05A of 2022) and CRM (DB) No. 427 of 2024 (arising out of RC No. 03A of 2022)]**, be released on bail (unless he is under arrest in some other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

45. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

46. The application for bail, thus, stands **allowed**.

In Re: Dr. Kalyanmoy Ganguly, CRM (DB) No. 467 of 2024 (arising out of RC No. 03A of 2022)

47. The petitioner was appointed as the President of the West Bengal Board of Secondary Education in the year 2016. He retired as the President of the Ad-

hoc Committee of the West Bengal Board of Secondary Education on June 24, 2022. RC-05 of 2022 was registered by the CBI against several accused persons including the petitioner. In connection with that case the petitioner was arrested on September 15, 2022. The case, in connection with which the present bail application has been filed being RC No. 3 of 2023 was registered by CBI against several accused persons including the petitioner under Sections 120B/420/109/467/468/471 of IPC and Sections 7/7A/8 of the Prevention of Corruption Act, 1988. In connection with that case, he was shown arrested on November 29, 2023.

48. It was submitted on behalf of the petitioner that he has been granted bail in connection with RC No. 5 of 2022 by this Court by order dated November 29, 2023 passed in CRM (DB) No. 4100 of 2023. The allegations against him in the instant RC No. 03 are identical with that in RC No. 05. Hence, he should be granted bail in this case also. Learned Counsel for the petitioner submitted that co-accused persons standing on the same footing as the petitioner, namely Prasanna Kumar Roy @ Rakesh and Jiban Krishna Saha have been enlarged on bail by the Hon'ble Supreme Court.

49. It was further submitted that the arrest of the petitioner in connection with the instance case was mala fide. His bail prayer in connection with RC No. 05 was allowed by this Court in the first half on November 29, 2023. On that very date, in the second half, the CBI obtained an order from the learned Trial Court for showing the petitioner as arrested in connection with RC No. 03 of 2023.

50. It was submitted that till date the CBI has not been able to show whether or not the petitioner is the recipient of any ill-gotten money. No property belonging to the petitioner has been attached. He was not named in the FIR. He is not the prime accused. The appointment letters were issued on the basis of recommendation letters provided by the WBCSSC. The West Bengal Board of Primary Education was merely the appointing authority on the basis of recommendations made by WBCSSC.

51. Learned Counsel submitted that the petitioner is in judicial custody for more than 2 years taking into account his custodial detention in connection with RC No. 5 of 2022. Learned Trial Court has not even taken cognizance since sanction of the State Government under Section 17A of the Prevention of Corruption Act has still not been granted. Considering the huge number of witnesses proposed to be examined by the prosecution and large number of documents proposed to be exhibited by the prosecution, nobody can say when the trial will conclude. Hence, on the touch stone of Article 21 of the Constitution, the petitioner's prayer for bail should be allowed.

52. Opposing the bail prayer, learned Advocate for the CBI submitted that the petitioner had an active role to play in the alleged offence. He was a party to the criminal conspiracy to cheat members of the public. There is sufficient incriminating material implicating the petitioner in the alleged offence. The trial has not been able to proceed since the State Government is sitting tight on the issue of grant of sanction to prosecute under Section 17A of the Prevention of

Corruption Act. It is not the fault of the prosecution that there is delay in the trial.

53. The petitioner is now in custody for almost 2 years and 2 months. He is 73 years old. He also appears to be suffering from various ailments. I find that he is similarly circumstanced as a co-accused person, viz, Dr. Subires Bhattacharya, who has been granted bail by this very judgment. Hence, on the grounds on which I allowed the bail prayer of Dr. Subires Bhattacharya, I am inclined to allow the present bail petition, i.e., the ground of lengthy custodial detention of the petitioner, coupled with the fact that the trial has not progressed at all, thereby abrogating the petitioners' fundamental rights to personal liberty and speedy trial enshrined in Article 21 of the Constitution of India.

54. Therefore, the accused/petitioner, namely **Dr. Kalyanmoy Ganguly, [CRM (DB) No. 467 of 2024 (arising out of RC No. 03A of 2022)]**, be released on bail (unless he is under arrest in some other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to

the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

55. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

56. The application for bail, thus, stands **allowed**.

In Re: Koushik Ghosh, CRM (DB) No. 481 of 2024 (arising out of RC No. 03A of 2022)

57. The petitioner seeks bail in connection with RC No. 03 of 2022 registered by the CBI against the petitioner, amongst others, alleging commission of offence under Sections 120B/109/201/420/467/468/471 of IPC read with Sections 7/7A/8 of the Prevention of Corruption Act, 1988.

58. It was submitted on behalf of the petitioner that his name was not there in the FIR. His name transpired in the first supplementary charge sheet dated May 16, 2023. He was arrested in connection with RC No. 03 of 2022 on February 17, 2023. Since then he is in judicial custody.

59. Learned Counsel for the petitioner submitted that cognizance of the matter has not yet been taken by the learned Trial Court for lack of sanction to prosecute from the end of the State Government as required under Section 17A of the Prevention of Corruption Act, since, some of the accused persons are retired Government employees and the allegations against them pertain to the

discharge of their duties in the course of such employment. Without taking cognizance, the petitioner cannot be kept in judicial custody.

60. Learned Counsel primarily harped on the breach of the petitioner's fundamental right to personal liberty and speedy trial. He submitted that the petitioner has been in custody for over one year and eight months and there is no possibility of an early beginning of the trial, let alone an early conclusion.

61. The arguments advanced on behalf of CBI were essentially the same as were advanced in the other cases which I have dealt with hereinabove. In a nutshell, learned Advocate for the CBI argued that the petitioner's role in the alleged offence is well established by the material gathered by the prosecution. He, in criminal conspiracy with the other accused persons, cheated a large number of people and amassed huge wealth. Given the nature and gravity of the alleged offence, the petitioner's prayer for bail should be rejected.

62. I do not wish to make any comment on the merits of the prosecution case nor is the same warranted. I see that this petitioner does not stand on a worse footing than some of the petitioners in the bail applications which I have considered above, namely, Dr. Subires Bhattacharya and Dr. Kalyanmoy Ganguly. Further, this petitioner also has been in incarceration for an appreciable period of time i.e., more than one year and eight months without there being any progress in the trial at all. Hence, keeping in mind the principles governing grant/rejection of bail prayer as discussed in the earlier part of this judgment and also in view of the fundamental right to personal liberty and speedy trial that every under trial citizen has, for the reasons

recorded in CRM (DB) 173 of 2024, I am inclined to allow the petitioner's prayer for bail.

63. Therefore, the accused/petitioner, namely **Koushik Ghosh, [CRM (DB) No. 481 of 2024 (arising out of RC No. 03A of 2022)]**, be released on bail (unless he is under arrest in some other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

64. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

65. The application for bail, thus, stands **allowed**.

In Re: Sk. Ali Imam & Md. Sahid Imam, CRM (DB) No. 248 of 2024 (arising out of RC Case No. 03A of 2022)

66. These two petitioners have been implicated in RC No. 3 of 2022 registered by the CBI under Sections 120B/109/201/420/467/468/471 of IPC read with Sections 7/7A/8 of the Prevention of Corruption Act, 1988 against several accused persons including these petitioners.

67. Learned Counsel submitted that the petitioners were arrested on February 17, 2023, and since then they are languishing in judicial custody. They have been falsely implicated. They have no role to play in the alleged offence. Trial has not progressed at all. The prosecution intends to examine 135 witnesses and proposes to exhibit 382 documents, taking all the charge sheets together. On the ground of violation of their fundamental right to personal liberty and speedy trial, the petitioners prayed for bail.

68. Learned Advocate for CBI opposed the prayer for bail advancing the same arguments that were made on behalf of CBI in the earlier bail applications which I have disposed of hereinabove. Essentially, learned Advocate for CBI emphasized that these two persons were actively involved in generating forged appointment letters and receiving money from the beneficiaries of such letters. If enlarged on bail, these petitioners are likely to tamper with evidence or intimidate prosecution witnesses. The prosecution cannot be faulted for the delay in progress of the trial. The petitioners' bail prayer should be rejected.

69. It appears from the material on record that the present petitioners stand substantially on the same footing as Koushik Ghosh who has been granted bail in CRM no. 481 of 2024 by this very judgment. The period of custodial detention of Koushik Ghosh and the present petitioners is the same, i.e. more

than one year and eight months. For the same reasons for which the bail prayer of Koushik Ghosh was allowed, I am inclined to allow the present application for bail. In other words, essentially on the ground of long incarceration of the petitioners without there being any progress in the trial, thereby resulting in infringement of the petitioners' fundamental right to personal liberty and speedy trial as enshrined in Article 21 of the Constitution of India, as has been discussed in the earlier part of this judgment, I allow the present bail application.

70. Therefore, the accused/petitioners, namely **Sk. Ali Imam & Md. Sahid Imam, [CRM (DB) No. 248 of 2024 (arising out of RC Case No. 03A of 2022)]**, be released on bail (unless he is under arrest in some other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioners shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioners, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

71. In the event they fail to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel their bail automatically without reference to this court.

72. The application for bail, thus, stands **allowed**.

In Re: Santi Prasad Sinha., CRM (DB) No. 823 of 2024 (arising out of RC case no. 03A of 2022)

And

In Re: Santi Prasad Sinha., CRM (DB) No. 818 of 2024 (arising out of RC case no. 04A of 2022)

And

In Re: Santi Prasad Sinha., CRM (DB) No. 822 of 2024 (arising out of RC case no. 05A of 2022)

73. In CRM (DB) No. 823 of 2024, the petitioner seeks bail in connection with RC No. 3 of 2022. In CRM (DB) 818 of 2024, the petitioner seeks bail in connection with RC No. 4 of 2022. In CRM (DB) 822 of 2024, the petitioner seeks bail in connection with RC No. 5 of 2022.

74. The investigating agency filed charge sheet dated September 30, 2022, in connection with RC 5 of 2022, under Sections 120B/201/420/467/468/471 of IPC read with Section 7 of Prevention of Corruption Act against the petitioner and 15 other persons. Final charge sheet has been filed against the accused persons including this petitioner under Sections 120B/109/201/420/467/468/471 of IPC read with Sections 7/7A/8 of the Prevention of Corruption Act, 1988.

75. RC No. 3 of 2022 was registered by CBI for investigation on the basis of an order dated April 7, 2022, passed by a learned Judge of this Court in WPA no. 55538 of 2022. In the FIR dated April 7, 2022, filed by the CBI, it was alleged that the petitioner, in conspiracy with other unknown public servants, dishonestly extended undue advantage to some candidates in the matter of appointment of Assistant Teachers in Class IX and X (First State Level Selection Test), without maintaining fairness and offered appointment to undeserving, non-listed and below ranked candidates, thereby flouting the WBCSSC Rules, 2016.

76. The petitioner was arrested on August 10, 2022, in connection with RC No. 5 of 2022. Since then the petitioner is in judicial custody. Since he was not shown arrested in connection with RC No. 3 of 2022, he surrendered before the learned Trial Court on September 9, 2022. In connection with RC No. 4 of 2022, the petitioner was shown arrested on March 24, 2023.

77. The petitioner submitted that he joined the West Bengal Board of Secondary Education as Secretary in 2011. He retired from that service in 2012. On August 1, 2018, the petitioner joined WBCSSC as Advisor for a period of 6 months. Such appointment was extended from time to time.

78. It was submitted that although charge sheet against the petitioner was submitted on September 30, 2022, till date the learned Trial Court has not been able to take cognizance of the offences alleged for want of sanction to prosecute from the end of the State Government. Without taking cognizance, further remand of the petitioner beyond the statutory period is illegal. In this

connection learned Counsel for the petitioner relied on Section 309(2) of the Code of Criminal Procedure, the material portion of which reads thus:-

“If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody”

79. Learned Counsel further submitted that the petitioner is in judicial custody for over 2 years without there being any progress in the trial. On the touchstone of Article 21 of the Constitution of India, the petitioner should be released on bail. Co-accused persons standing on the same footing as the petitioner have been enlarged on bail by the Hon'ble Supreme Court as also by this Court. In particular, learned Advocate referred to co-accused persons Prasanna Kumar Roy, Dr. Kalyanmoy Ganguly and Abdul Khalek and drew to our attention the orders granting bail to those accused persons.

80. Opposing the petitioner's bail prayer, learned Advocate for CBI submitted that the petitioner is the prime accused. He engineered the entire scam, in conspiracy with the other accused persons. There is clinching incriminating evidence against the petitioner. It is not for any laches on the part of CBI that the trial has not proceeded. The State Government is sitting tight over the issue

of grant / refusal of sanction to prosecute. Given the seriousness of the alleged crime, the petitioner's prayer should not be allowed.

81. I have given my anxious consideration to the rival contentions of the parties. The petitioner may be the prime accused. The prosecution may have a very strong case to secure his conviction. Nobody stands in the way of the prosecution doing so. However, one cannot be oblivious of an under trial's fundamental right to personal liberty and speedy trial. In fact, the graver the offence, the sooner the trial should be concluded so that if the accused person is found guilty following due process of law, he can be punished. No accused person can be indefinitely detained in judicial custody without there being any progress in the trial at all. That would amount to complete abrogation of the dual fundamental rights to personal liberty and speedy trial which every accused person has. These rights are paramount and must prevail over all other considerations.

82. Further, given the offences alleged, i.e., cheating members of the public by issuing forged appointment letters in the post of teachers against payment of money, the prosecution evidence would be largely documentary in nature. Investigation is complete. By now, the prosecution must be having all relevant evidence in its possession. In view of the aforesaid and in the light of the discussion on the principles governing grant/rejection of bail, as recorded in the earlier part of this judgment, taking note of the long incarceration of the petitioner for more than 2 years and 2 months coupled with zero progress in the trial, I am inclined to allow the petitioner's prayer for bail.

83. Therefore, the accused/petitioner, namely **Santi Prasad Sinha,[CRM (DB) No. 823 of 2024 (arising out of RC case no. 03A of 2022)], [CRM (DB) No. 818 of 2024 (arising out of RC case no. 04A of 2022)], [CRM (DB) No. 822 of 2024 (arising out of RC case no. 05A of 2022)]**, be released on bail (unless he is under arrest in some other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

84. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

85. The application for bail, thus, stands **allowed**.

In Re: Subrata Samanta Roy @ Babu., CRM (DB) No. 2562 of 2024 (arising out of RC case no. 02A of 2022)

and

In Re: Subrata Samanta Roy @ Babu., CRM (DB) No. 2564 of 2024 (arising out of RC case no. 03A of 2022)

86. In CRM (DB) 2562 of 2024, the petitioner seeks bail in connection with RC No. 02 of 2022. In CRM (DB) 2564 of 2024, the petitioner seeks bail in connection with RC No. 03 of 2022.

87. The petitioner submitted that he was arrested on February 17, 2023, in connection with RC No. 02 of 2023. Since then he is languishing in judicial custody. He was subsequently shown arrested on November 29, 2023 in connection with RC No. 03 of 2023.

88. It was submitted that the petitioner's name did not transpire when the proceedings were initiated and the investigation culminated in the first charge sheet dated December 30, 2022, under Sections 120B/420/468/471 of IPC read with Section 7 of the Prevention of Corruption Act, 1988. After further investigation, a supplementary charge sheet dated May 17, 2023, was filed by CBI under Sections 120B/420/467//468/471 of IPC read with Sections 7/7A/8 of Prevention of Corruption Act, 1988 as against the petitioner and another accused person namely Prasanna Kumar Roy. It was submitted that Prasanna Kumar Roy has been granted bail by the Hon'ble Supreme Court. Learned Counsel submitted that the petitioner stands on better footing than Prasanna Kumar Roy. Therefore, the petitioner should be granted bail.

89. Learned Advocate for CBI opposed the bail prayer on the same grounds as he opposed the bail applications of the other petitioners. Learned Advocate basically submitted that there is sufficient incriminating material against the

petitioner. He played an active role in the alleged offence. He is likely to influence prosecution witnesses if enlarged on bail and also there is a possibility of the petitioner tampering with evidence.

90. I need not deal with the merits of the case. Supplementary charge sheet dated May 17, 2023 was filed against this petitioner and Prasanna Kumar Roy. Prasanna Kumar Roy was granted bail by the Hon'ble Supreme Court on the ground that he was in custody for more than one year and cognizance of the offence alleged is yet to be taken. This petitioner is in judicial custody since February 17, 2023. i.e., for almost 1 year and 9 months in connection with RC No. 2 of 2022 and for almost one year in connection with RC No. 3 of 2022. Learned Trial Court has not yet taken cognizance of the offence.

91. There appears to be very little possibility of the trial beginning on an early date, let alone early conclusion of the trial.

92. Accordingly, on the ground of prolonged incarceration of the petitioner without there being any progress in the trial and also considering that the petitioner is similarly circumstanced as Prasanna Kumar Roy who has been enlarged on bail by the Hon'ble Supreme Court, I am inclined to allow the present bail applications of the petitioner.

93. Therefore, the accused/petitioner, namely, **Subrata Samanta Roy @ Babu., [CRM (DB) No. 2562 of 2024 (arising out of RC case no. 02A of 2022) and CRM (DB) No. 2564 of 2024 (arising out of RC case no. 03A of 2022)]**, be released on bail (unless he is under arrest in some other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two

sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

94. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

95. The applications for bail, thus, stands **allowed**.

In Re: Partha Chatterjee, CRM (DB) No. 583 of 2024 (arising out of RC Case No. 05A of 2022)

96. The petitioner seeks bail in connection with RC No. 5 of 2022 dated May 20, 2022, registered by the CBI under Sections 120B/201/420/467/468/471 of IPC read with Section 7 of the Prevention of Corruption Act, 1988.

97. Learned Advocate for the petitioner submitted that the petitioner was appointed as the Minister-in-charge of Higher Education and School Education Department, West Bengal Government, after the Assembly Election of 2016. He is a septuagenarian and suffers from various old age related ailments. Learned

Advocate relied on reports issued by the Medical Officer of the concerned correctional home.

98. It was further submitted that the prime accused is Santi Prasad Sinha, who was the convener of the Supervisory Committee constituted for supervising, monitoring and guiding the WBCSSC in connection with the pending recruitment process. The allegation against this petitioner is that he approved the constitution of such Committee in violation of the provisions of the School Service Commission Act, 1997.

99. The petitioner was not named in the First Information Report. During the investigation of RC No. 05 of 2022, an Enforcement Case Information Report dated June 24, 2022, was registered by the Enforcement Directorate and the petitioner was arrested on July 23, 2022, by the officials of Enforcement Directorate from his residence for his alleged involvement in the offence of money laundering. After completion of enquiry, a petition of complaint was filed by the Enforcement Directorate before the jurisdictional Court and was registered as ML Case No.13 of 2022, arraigning the petitioner as an accused.

100. It was submitted that when the petitioner was in the custody of Enforcement Directorate, he participated in and cooperated with RC No. 5 of 2022.

101. However, while he was in custodial detention in connection with ML Case No. 13 of 2022, on September 16, 2022, the petitioner was produced before the learned Trial Court in connection with RC No. 05 of 2022. On a petition moved by CBI, the learned Trial Court allowed CBI's prayer to show the petitioner as

arrested and also allowed the prayer for remanding the petitioner to CBI's custody. The petitioner was in CBI's custody from September 16, 2022 till September 21, 2022. On September 22, 2022, the petitioner was remanded to judicial custody. Since then he is in jail custody.

102. Learned Counsel submitted that investigation is complete. Several charge sheets have been filed. No incriminating material has been found against the petitioner. He is in custody for more than 2 years. Trial has not begun. The prosecution intends to examine 137 witnesses and exhibit more than 200 documents. There is no possibility of an early conclusion of the trial. On the ground of breach of the petitioner's fundamental right to personal liberty and speedy trial, he should be granted bail on such conditions as this Court may decide.

103. Learned Advocate for CBI vehemently opposed the petitioner's prayer for bail. He submitted that the petitioner is the master mind behind the SSC scam. He illegally removed Dr. Sharmila Mitra from the post of Chairperson of WBCSSC violating the provisions of Section 5 of the WBCSSC Act, 1997. He appointed Prof. Saumitra Sarkar as the new Chairman of WBCSSC on the basis of hand written bio-data of Prof. Sarkar. He appointed Dr. Santi Prasad Sinha as the Advisor to WBCSSC. He forced Prof. Sarkar to resign from Chairmanship of WBCSSC on finding him to be an unwilling party to the fraudulent activities in connection with the recruitment scam.

104. Professor Sarkar had issued a show cause letter to the co-accused person, Dr. Santi Prasad Sinha, in connection with issuance of forged recommendation

letters after expiry of the concerned panel. Professor Sarkar was replaced by co-accused Ashok Kumar Saha in violation of the provisions of Section 4 of WBCSSC Act, 1997. The petitioner used to send various lists of ineligible candidates through one Prabir Kumar Bandopadhyay, who had worked as OSD to the petitioner from 2014 to 2021. Prabir used to forward such lists to the concerned officials of the WBCSSC so that the process for appointment of such candidates could be taken up by the Commission and the Board.

105. It was further submitted that the co-accused Dr. Subiresh Bhattacharya received various lists of candidates from the Naktala residence of the petitioner. At the said residence, there was an office on the ground floor where lists of candidates were updated. Both Prasanna Kumar Roy and Pradip Singh, two of the accused persons, were frequent visitors to the petitioner's Naktala residence. Dr. Santi Prasad Sinha and Dr. Subires Bhattacharya also used to frequently visit the petitioner at his Naktala residence. The lists of candidates were handed over to the said officials of WBCSSC for due processing in order to extend undue benefits to the concerned candidates by issuing recommendation and appointment letters. The list of candidates along with the money (excluding the commission of Prasanna Kumar Roy) were handed over to the petitioner at his Naktala residence. The lists of candidates were then handed over to Subires Bhattacharya by the petitioner for placing such candidates on the panel and issuing recommendation letter so that appointment letters could be generated for such candidates.

106. It was further submitted that the petitioner was instrumental in introducing the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-teaching Staff) Rules, 2018 which made West Bengal Board of Secondary Education (in short “WBBSC”) the central authority for issuing appointment letters for both teaching and non-teaching posts in Government aided/sponsored schools in West Bengal. Due to criminal conspiracy involving the accused persons namely Dr. Subires Bhattacharya , Dr. Kalanmoy Ganguly and the petitioner, the 2018 Rules were illegally given retrospective effect by making the same applicable for a process of recruitment which started in 2016.

107. It was then submitted that all crucial decisions like appointments to the statutory posts of Secretary, President, Chairman etc. at WBBSE and WBCSSC were finally approved by the petitioner. He was the kingpin so to say.

108. Learned Advocate for the CBI submitted that due to the heinous nature of the alleged offence and the availability of enough incriminating material against the petitioner, his prayer for bail should be rejected.

109. Although I have noted the points urged on behalf of CBI in opposing the petitioners bail prayer, the same pertain to the merits of the case. I am not inclined to express any opinion on the strength or otherwise of the prosecution case. I find that the petitioner is in judicial custody from September 22, 2022, i.e., for more than 2 years and 1 month. Learned Trial Court has not yet taken cognizance of the alleged offences for want of sanction to prosecute from the end of the State Government in respect of some of the accused persons who are

retired public servants. However, I understand that sanction to prosecute has been granted by the competent authority as far as the petitioner is concerned.

110. In any view of the matter, it is highly improbable that the trial will begin on an early date. Even assuming that the trial was to begin in the near future, an early conclusion of the trial is clearly not possible given the number of witnesses that the prosecution proposes to examine and the number of documents that the prosecution intends to exhibit. The prosecution may have an iron-cast case against the petitioner for securing his conviction. Nobody stands in the way of the prosecution to do so. However, one cannot be oblivious of the fundamental right to personal liberty and speedy trial which every under trial has. Such right is paramount and must prevail over all other considerations.

111. It was also urged on behalf of CBI that the petitioner being an influential person, he is likely to tamper with the evidence or influence witnesses if released on bail. I do not find much merit in such contention. The petitioner is no more in a position of power. Given the nature of the charges, the prosecution evidence would substantially be documentary in nature. Upon completion of investigation, the prosecution would be having in its possession all relevant evidence. I also do not find any real possibility of the petitioner fleeing from the course of justice. He has deep roots in the society.

112. Without making any comment on the merits of the case and solely on the ground of prolonged incarceration of the petitioner without there being any progress in the trial which has infringed the petitioner's fundamental right

under Article 21 of the Constitution, I am inclined to allow the petitioner's application for bail. I may note that there is considerable similarity between the allegations made against this petitioner and the allegations that were made against the appellant in the case of **V. Senthil Balaji (*supra*)**, wherein the Hon'ble Supreme Court granted bail to the appellant.

113. Therefore, the accused/petitioner, namely, **Partha Chatterjee, [CRM (DB) No. 583 of 2024 (arising out of RC Case No. 05A of 2022)]**, be released on bail (unless under arrest in any other case) upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

114. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

115. The application for bail, thus, stands **allowed**.

In Re: Chandan Mondal @ Ranjan, CRM (DB) No. 2543 of 2024 (arising out of RC No. 05A of 2022)

116. The petitioner seeks bail in connection with RC 5 dated May 20, 2022, registered by the CBI for alleged commission of offence under Sections 120B/201/420/467/468/471 of IPC read with Sections 7/8 of the Prevention of Corruption Act, 1988, against 9 accused persons including the petitioner. It was submitted that the petitioner was arrested in connection with RC 05 of 2022 on February 17, 2023. Initially he was remanded to police custody for 4 days till February 21, 2023. Thereafter he was remanded to judicial custody and he is in such custody since then.

117. Learned Counsel for the petitioner submitted that the petitioner's name was not there in the First Information Report nor in the charge sheet which was submitted by the investigating agency on September 30, 2022. His name transpired when the first supplementary chargesheet was submitted on March 15, 2023. On January 6, 2024, the investigating agency submitted the second supplementary charge-sheet wherein the petitioner's name did not appear. The allegation is that the petitioner worked as an agent of co-accused Prasanna Kumar Roy. He collected money from candidates who were given appointment illegally as teachers. He handed over such money to Prasanna Kumar Roy. It is also alleged that huge sums of money were transferred from the petitioner's account to the bank accounts of Prasanna Kumar Roy, and his wife and bank accounts in the names of various companies controlled by Prasanna Kumar Roy and his wife.

118. Learned Counsel submitted that the first supplementary charge sheet which concerns the petitioner has still not been taken cognizance of by learned Trial Court. Hence, the process of supplying copy under Section 207 Cr.P.C. is still pending. This is creating a hurdle for the petitioner in exercising his right of defence.

119. It was submitted that another co-accused, namely Pradip Singh has been granted bail by this Court in CRM (DB) 4647 of 2023, in view of the period of detention suffered by that accused person.

120. Learned Counsel submitted that the petitioner has been in judicial custody for more than one year and eight months. Investigation is complete. One of the prime accused persons, namely Prasanna Kumar Roy, has been granted bail by the Hon'ble Supreme Court on November 10, 2023, taking note of the offences alleged against him and the fact that he had already undergone imprisonment of more than 1 year and also taking into account that cognizance is yet to be taken on the charge sheets filed. The petitioner stands at least on the same footing if not on a better footing than Prasanna Kumar Roy and hence should be enlarged on bail.

121. Learned Advocate for CBI while opposing the prayer for bail, submitted that the petitioner was an integral part of the criminal conspiracy to defraud unsuspecting members of the public by offering jobs as teachers against payment of money. It is not the fault of the prosecution that the trial has not progressed. If enlarged on bail, the petitioner is likely to tamper with evidence

and may also flee from the course of justice. Considering the gravity of the alleged crime, the petitioner's bail prayer should be rejected.

122. I have considered the rival contentions of the parties. The prosecution may have in its possession more than adequate incriminating material against the petitioner. However, that is a matter of merits of the case. I see that the petitioner is in judicial custody now for about 1 year and 9 months. Learned Trial Court has not yet taken cognizance of the offence alleged for want of sanction to prosecute co-accused persons from the end of the State Government. One of the principal accused persons for whom the petitioner allegedly worked, has been extended the privilege of bail by the Hon'ble Supreme Court. There is no possibility of an early conclusion of the trial which has not even begun.

123. In view of the aforesaid, taking note of the long incarceration of the petitioner and keeping in mind the utmost importance of an under-trial's fundamental right to personal liberty and speedy trial, solely on the ground of delay in progress of trial, I am inclined to allow this bail application.

124. Therefore, the accused/petitioner, namely, **Chandan Mondal @ Ranjan, [CRM (DB) No. 2543 of 2024 (arising out of RC No. 05A of 2022)]**, be released on bail (unless under arrest in any other case). Upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of Rs.25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until

further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future and on further condition that the petitioner, while on bail, shall not leave the territory of the State of West Bengal without prior permission of this court and shall report to the Superintendent of Police, CBI, ACB, Kolkata, once in a week until further orders. Prior to his release on bail, he shall deposit his passport, if any, to the trial court.

125. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

126. The application for bail, thus, stands **allowed**.

Concluding remarks

127. Before parting, I would like to add a few concluding words which would be relevant to all the bail applications which I have considered above and allowed.

128. The crux of the allegations against the petitioners before us is that they hatched a criminal conspiracy to defraud members of the public and in particular, those persons who aspired to be teachers in Government educational institutions. They offered jobs to undeserving/ineligible candidates against payment of money. They forged appointment letters. They collected huge sums of money from the concerned candidates. Indeed, if such allegations are ultimately proved to be true at the trial, the same would establish that the petitioners have committed a grave and heinous criminal offence. They should then be appropriately punished.

129. However, the law of our country says that a person accused with commission of a criminal offence will be presumed to be innocent till he is found to be guilty and convicted by a competent court of law. An accused person may be detained in judicial custody if in a particular circumstance the same is necessary for proper conduct of investigation. However, once investigation is complete and charge sheet has been submitted by the investigating authority, only in very few exceptional circumstances, continued incarceration of the accused person would be justified. One such circumstance may be the criminal history of the accused person, i.e., he has criminal antecedents. If it is found that such a person is a habitual offender, e.g., a serial killer, it may not be prudent to set him at large even after completion of investigation. Societal interest would warrant that he be detained in prison. Again, if there is a real flight risk, i.e., the accused person is likely to abscond if released, bail may be justifiably refused to him. Similarly, if the accused person, if set free is likely to tamper with evidence or intimidate prosecution witnesses, his bail prayer may be refused. However, none of these exceptional circumstances, in my considered opinion, apply to any of the petitioners before us. It is highly unlikely that the petitioners will be in a position to commit similar offences if enlarged on bail. As regards tampering with evidence, in the present case, the evidence relates to documents like fake appointment/recommendation letters which have already been seized by the investigating authority and/or statements of public servants. It is

highly improbable that the release of the petitioners from judicial custody will in any way hamper the trial.

130. I have also gone through the order dated November 29, 2023, passed by a coordinate bench in CRM (DB) 4100 of 2023 whereby bail was granted to one of the above petitioners in RC No. 5 of 2022, namely, Dr. Kalyanmoy Ganguly. The Coordinate Bench applied the Tripod test of likelihood of the petitioner absconding, possibility of the petitioner committing similar offences and probability of the petitioner interfering with the progress of investigation or trial. The Bench also observed that “to continue under-trial detention of the petitioner merely on the gravity of the offence when the other requirements of absconding, tampering etc. i.e, the tripod test does not justify such end would, in our estimation, amount to punishing the accused under the garb of under-trial detention. It must also be borne in mind that the offences, even if proved, would not attract mandatory life imprisonment”.

131. Keeping an under-trial in incarceration for an indefinite period of time would tantamount to pre-trial conviction. That is unknown to our criminal jurisprudence. The allegations against an accused person may be extremely grave. Still, the same have to be proved in a duly held trial before a competent Court. An accused person cannot be detained in judicial custody for a long period of time merely on the basis of allegations which are yet to be proved. The fundamental right of a person including an under-trial, as enshrined in Article 21 of the Constitution of India, includes his right to personal liberty and speedy conclusion of a trial. Such fundamental right is paramount and

overrides all other considerations in a criminal trial, irrespective of the nature and gravity of the charge. If the State or the legal system does not have the means to conclude a criminal trial within a reasonable period of time, the prosecution should not oppose the accused person's prayer for bail, other than in exceptional circumstances some of which I have discussed above. Right to personal liberty is precious and perhaps the second most important fundamental right after right to life.

131A. Noting CBI's submission that further investigation is in progress as directed by this Court, I make it clear that nothing in this judgment and order shall prevent CBI from carrying on with such investigation. If fresh material against any or all of the petitioners in these bail petitions, is unearthed in the process of such further investigation, CBI will be at liberty to further interrogate all such petitioners, if it deems it necessary to do so. The concerned petitioners are directed to fully co-operate with the investigating officer in that regard. However, further custodial interrogation is not necessary, in my considered opinion.

132. In fine, all the 14 bail applications stands **allowed**.

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

134. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

Apurba Sinha Ray, J.

PART – A

In Re: Dr. Subires Bhattacharya @ Subiresh Bhattacharjee, CRM (DB) No. 173 of 2024 (arising out of RC no. 03A of 2022)

And

In Re: Dr. Subires Bhattacharya @ Subiresh Bhattacharjee, CRM (DB) No. 172 of 2024 (arising out of RC no. 05A of 2022)

In Re: Sri. Ashok Kumar Saha CRM (DB) No. 418 of 2024 (arising out of RC No. 05A of 2022)

And

In Re: Sri. Ashok Kumar Saha CRM (DB) No. 427 of 2024 (arising out of RC No. 03A of 2022)

In Re: Dr. Kalyanmoy Ganguly, CRM (DB) No. 467 of 2024 (arising out of RC No.03A of 2022)

In Re: Santi Prasad Sinha., CRM (DB) No. 823 of 2024 (arising out of RC case no. 03A of 2022)

And

In Re: Santi Prasad Sinha., CRM (DB) No. 818 of 2024 (arising out of RC case no. 04A of 2022)

And

In Re: Santi Prasad Sinha., CRM (DB) No. 822 of 2024 (arising out of RC case no. 05A of 2022)

In Re: Dr. Partha Chatterjee, CRM (DB) No. 583 of 2024 (arising out of RC Case No. 05A of 2022)

The crux of the issue—

1. In a nutshell, the petitioners Dr. Subires Bhattacharya @ Subiresh Bhattacharjee (aged about 65 years), Sri. Ashok Kumar Saha (aged about 70 years), Dr. Kalyanmoy Ganguly (aged about 73 years), Sri Santi Prasad Sinha (aged about 72 years), Dr. Partha Chatterjee (aged about 72 years) claim that they are in the custody for a considerable period ranging from one year eight months to two years six months. They have also claimed that some other accused persons similarly situated were granted bail by the Hon'ble Supreme Court though they were in custody less than the period incarcerated by the present petitioners. As the investigation is complete and evidences are in respect of the documents only, the petitioners may be granted bail on any condition. There is no chance of an early conclusion of the trial. The investigating agency was unable to obtain sanction in respect of the offences alleged to have been committed by the petitioners, excepting Dr. Chatterjee. It is further contended that the petitioners are not influential persons since, most of them have retired from their respective services long ago and Dr. Chatterjee has been relieved from his political power and post, and, therefore, they may be granted bail on any condition that the court may decide. The learned Counsels of the petitioners have also pointed out that the Court should not keep the accused in custody for an indefinite period during pendency of the criminal case since that would tantamount to say that the bail Court is authorizing

punishment of the accused even before they are proven guilty in accordance with law.

2. The learned counsel appearing for the Central Bureau of Investigation has categorically stated that in the year 2016 the accused persons had pre-planned the commission of the crime by which they had intended, literally, to sell the public employment in lieu of huge sum of money and for that they had even changed the relevant rules to withdraw the power of recommending and appointing authority from erstwhile units and to transfer the said powers to their selected caucus. The agency could not take forward the case as the State Government didn't grant sanction to most of the accused inspite of issuing repeated letters to the authority concerned. The accused are influential persons with political connections having deep roots with the authority which is reluctant to grant sanction to prosecute them. Lives of a huge number of young educated people have been destroyed due to sheer greed of the highly placed State Government functionaries including the erstwhile State Education Minister. If the accused persons are released on bail they will not only influence and intimidate the witnesses but even terminate their services, since most of them are temporary and contractual service holders. The instant case is not an ordinary case, since the investigation agency faced steep resistance from some quarters of the State Government who didn't provide minimum co-operation to the agency. Even the issue of sanction has been kept pending for an indefinite period by the competent authority enabling the petitioners to take the plea of delay in progress of trial and helping them to obtain bail on the

basis of recent decisions of the Hon'ble Apex court favouring bail order in respect of the accused who are incarcerated in the custody for a long time. In fact, the competent authority of the State Government is doing indirectly which they cannot do directly. The Hon'ble Governor of the State of West Bengal had granted sanction to prosecute Dr. Chatterjee since he was a minister at the relevant point of time. If the petitioners are enlarged on bail, it would be difficult to bring home charges and, further, in view of the complications and intricacies involved in the offences, the investigation is still going on to unearth other relevant aspects of the matter and there is always a scope for the agency to file supplementary Charge sheet in future.

Consideration--

The basis:

3. I have considered the rival contentions of the parties. I have also taken into consideration the observation of my learned senior Brother.

4. Undoubtedly and undeniably, each case has to be judged by its own merits and further, even a small difference in the factual matrix of the case is sufficient to seek exemption from the applicability of the reported judicial decisions claiming parity. Another solemn principle espoused in our revered justice delivery system is 'bail is the rule, jail is the exception '. Recently in the decision of "**Afjal Ali Sha @ Abjal Shaukat Sha Vs The State Of West Bengal**" [Transfer Petition (Criminal) No. 409 of 2021] reported in 2023 SCC

OnLine SC 282 Hon'ble Apex Court has candidly held that bail should not be granted to the concerned accused till conclusion of trial even he has been languishing in the judicial custody for more than five years except by the High Court, in view of his antecedent. What I want to mean is that the delay in progress of trial may not be the sole criteria for enlarging the accused persons on bail, if there are sufficient materials showing that there are exceptional circumstances / situations which justify further detention of the accused persons. In other words, it may be put in simple words, that this case, like Afjal Ali Sha @ Abjal Shaukat Sha's case,(supra), is an exception to the generally accepted rule that 'bail is the rule, jail is the exception '. Now, why is this case an exception?

Exception: why?

5. Before I delve into the matter, I would like to mention a brief particulars of the above applicants who were highly placed state functionaries:

A. Dr. Partha Chatterjee (the then Minister in charge, Department of Education, Government of West Bengal)

B. Dr. Kalyanmoy Ganguly (the then President of West Bengal Board of Secondary Education)

C. Dr. Santi Prasad Sinha (the then Advisor of West Bengal Central School Service Commission)

D. Dr. Subiresh Bhattacharya (The then Chairman of West Bengal Central School Service Commission)

E. Mr. Ashok Kumar Saha (the then Secretary of West Bengal Central School Service Commission)

6. The chargesheet was filed on 30.09.2022 by the CBI, and though the Hon'ble Governor had given sanction for prosecution of Dr. Partha Chatterjee, the process of sanction in respect of other four accused persons mentioned above, is still pending for more than two years. The CBI time and again approached the State Government for sanction but in vain. This Hon'ble Court also asked the Chief Secretary to the Government of West Bengal through the Learned Advocate General to look into the matter but ultimately it is found that the process of sanction is still incomplete.

7. In this regard, orders passed by the Hon'ble Coordinate Bench presided over by Hon'ble Justice Bagchi may be referred to.

The Order dated 22.03.2024 is quoted herein below:-

“.....4. We have perused the averments in the affidavit and its enclosures. From the enclosures it appears repeated correspondences have been made to the Chief Secretary to consider the issue of grant of sanction on and from December, 2022 but to no avail.

5. *It is pertinent to record that the prosecutions are a culmination of Court monitored investigation into a deep rooted scam with regard to illegal appointments to various posts in Government and Government aided schools in the State of West Bengal.*

6. *Conspiracy was hatched between the Minister-in-Charge and the head of the School Service Commission and others to derail the selection process by tampering with results and thereby appointing undeserving candidates to public posts. Allegation of corruption and that too at high places is a serious threat to rule of law and confidence in public administration. Offences involving economic crime and corruption fall in a different category. Their gravity cannot be measured only from the perspective of quantum of sentence prescribed in law but the far reaching impact of these crimes on public administration and confidence of the people in the affairs of the State. While these factors aggravate the gravity of the alleged offences against the petitioner it is also important for this Court to ensure that they are not subjected to undue under-trial detention as the sanctioning authority is dragging its feet over the issue of grant of sanction. Under these*

circumstances, for proper adjudication of cases it is necessary for this Court to obtain the view of the sanctioning authority with regard to the time frame within which it shall take a decision in the matter.

7. Law enjoins the embargo of sanction to protect honest and intrepid public servants from vexatious prosecutions. A prosecution which is a product of Court monitored investigation is said to be clothed with judicial imprimatur and cannot ordinarily be conceived as a vexatious one. It is also important to note that the grant of sanction under Section 19 of the Prevention of Corruption Act (unlike Section 197 of Cr.P.C.) is an automatic process. Delay in taking a decision thereon is a matter of serious regret.

8. Under such circumstances, we are constrained to adjourn the hearing of the bail applications to get a comprehensive understanding with regard to the time frame within which the sanctioning authority shall take a decision in the matter. Accordingly, sanctioning authority i.e. the Chief Secretary, Government of West Bengal is directed to submit report with regard to the time frame within

which he proposes to take a decision with regard to the grant of sanction.

9. Report be filed by the adjourned date”

The Order dated 03.04.2024 is quoted herein below:-

“.....3. Chief Secretary, Government of West Bengal is directed to file report with regard to issue of grant of sanction positively by Tuesday failing which this court shall be constrained to direct him to appear in person and explain his conduct.

4. Copy of the order be communicated to the Chief Secretary, Government of West Bengal for due compliance.

5. Let the matter appear for hearing on Tuesday (9.4.2024). ”

The Order dated 09.04.2024 is quoted herein below:-

“.....4. Strangely, the report of the Chief Secretary is silent with regard to grant of sanction in RC0102022A0005 for which request was made on 30.09.2022.

5. Report further notes documents in part have been submitted with regard to RC 0102022A0002 and RC 0102022A004 and no documents have been received in respect of RC012022A003-Kolkata.

6. Learned Government Pleader is also unable to enlighten us why the report of the Chief Secretary is silent with regard to the prayer for grant of sanction in respect of RC0102022A0005.

7. We are constrained to observe the Chief Secretary has failed to apply his mind to the matter and has submitted a laconic and incomplete report. He has failed to consider the magnitude of his responsibility in the matter of grant of sanction which as per law requires to be done in a time bound manner.

8. We are left to wonder why a responsible civil servant holding the highest office in the State has not discharged his statutory duties in a prompt manner resulting in an undesirable hiatus to the progress of the prosecution in cases involving deep rooted corruption in appointments to government/aided schools.

9. We hope malefic influence of accused persons who held prominent posts in public administration

including one who was a former minister does not have anything to do with the recalcitrant attitude of the Chief Secretary.

10. To insulate the Chief Secretary of undesirable influence, if any, we direct him to act independently and take an objective decision in the matter positively by 23rd April, 2024.

11. CBI strongly contends all documents with regard to the RC cases have been handed over to the sanctioning authority.

12. Be that as it may, the sanctioning authority is at liberty to approach the Officer of CBI viz., Ashwin Shenvi, Superintendent of Police, CBI, ACB, Kolkata for obtaining further documents and/or information relating to the crimes to enable him to take a decision thereon. CBI authorities shall assist the sanctioning authority in this regard.

13. Copy of this order be sent to the Chief Secretary, Government of West Bengal for due compliance.

14. Let the matters appear on 23.04.2024.”

The Order dated 23.04.2024 is quoted herein below:-

“.....5. On earlier occasion, Chief Secretary submitted an evasive report which did not find favour with the State. Accordingly, by order dated 09.04.2024 we directed the Chief Secretary to take a decision in the matter positively by today. Presently, an affidavit is filed by the Chief Secretary wherein he has stated voluminous documents are to be considered including the judgment delivered by a co-ordinate Bench of this Court in WPA 30649 of 2016.

6. We are not impressed by the affidavit submitted by the Chief Secretary. The Chief Secretary had been approached by the investigating agency in 2022, that is, two years ago. Although the prosecution case discloses a large scale corruption in the matter of public employment in government and government aided schools in the State of West Bengal, the Chief Secretary failed to consider the gravity and seriousness of the crime and did not take any

prompt decision in the matter. It must be borne in mind requirement of sanction is to weed out frivolous prosecution against honest and upright public servants. Public servants who are tainted with allegation of corruption cannot take the refuge under the umbrella of sanction and resist prosecution. Fair and effective administration of criminal justice requires speedy completion of trial. Sanctioning Authority ought to have borne in mind this fact and taken a prompt decision. He has singularly failed to exercise his statutory duty.

7. Advocate General fervently pleads a last opportunity may be given to the Chief Secretary to take a decision in the matter. Acceding to his plea, we direct the Chief Secretary to positively take a decision in the matter of granting sanction by 1st May, 2024, failing which this Court shall be constrained to initiate appropriate proceedings against him. While considering the prayer for sanction, the Chief Secretary must bear in mind the following principles:-

a) Allegations in the instant case relate to deep rooted corruption in high public offices. Acts of corruption by no stretch of imagination fall within the ambit of discharge of public duty;

b) Unlike section 197 Cr.P.C., grant of sanction under section 19 of the Prevention of Corruption Act is an automatic exercise. [See Lalu Prasad @ Lalu Prasad Yadav vs. State of Bihar through CBI (AHD) Patna];

c) To instill confidence in the criminal justice system, prosecution of corruption cases need to be fast tracked. Grant of sanction is the stepping stone to commencement of trial. Hence, it is the imperative duty of the sanctioning authority to take a prompt decision in the matter lest his indolent conduct smack of collusion and/or screening the accused from lawful prosecution;

d) We are conscious the accused have held high positions in State administration. While taking a decision in the matter of sanction against such persons, the Chief Secretary may be well advised to bear in mind the age old adage 'Be you ever so

high, the law is above you'. He should not be overawed or influenced by the position, authority or power and shall take an independent decision within the stipulated time;

e) Chief Secretary shall be at liberty to consult and take assistance from CBI authorities as and when required.

8. Matter is adjourned till 2nd May, 2024."

The Order dated 03.05.2024 is quoted herein below:-

"1. At the outset Mr. Ganguly, learned senior Counsel, contends two of the petitioners viz. Dr. Subires Bhattacharyya and Dr. Kalyanmoy Ganguly were appointed by the Hon'ble Governor. As per law sanction is to be obtained from the Hon'ble Governor and not from the Chief Secretary.

2. In view of this submission we direct the prosecuting agency i.e. CBI to submit report with regard to appropriate sanctioning authority with regard to the petitioners and other accused.

3. Report shall also indicate whether the appropriate authorities had been approached by the CBI for grant of sanction or not.”

The Order dated 07.05.2024 is quoted herein below:-

“1. CBI submits report stating the circumstances in which proposal for sanction was made before the Chief Secretary for prosecution of the petitioners apart from the former Minister of the State. It is contended as per Rule 26 of the Rules of Business the proposal for appointment of Chairman, Members and Secretary of all statutory Commissions constituted by the State Government (except the State Public Commission) are submitted before the Chief Minister and not the Governor. Accordingly, the proposal was placed before the Chief Secretary for grant of sanction by the competent authority.

2. As the issue relates to grant of sanction to prosecute public servants appointed in connection with the affairs of the State, copy of the report be handed over to the Advocate General to make submission with regard to the

authority competent to grant sanction. Copy of the report be also served upon the petitioners.

3. Chief Secretary shall submit response to the report as well as the proposal for sanction by the adjourned date.”

The Order dated 3.07.2024 of this Bench is quoted herein below: “

“Read order dated May 7, 2024.

A Coordinate Bench had directed the Chief Secretary to submit his response to the report filed by CBI as well as the proposal for sanction, by the adjourned date. The matter was adjourned till June 11, 2024.

Thereafter, the matter was not taken up for hearing till today.

Today, the State says that there may have been some communication gap. The Chief Secretary’s response is not ready. We grant three weeks’ time peremptorily to the Chief Secretary to submit his response to CBI’s report as well as the proposal for sanction to prosecute. Insofar as this

aspect of the matter is concerned, the matters will be listed three weeks hence.

However, we are of the view, prima facie, that the issue of sanction to prosecute may not have any bearing on the bail applications that are pending before us. We do not wish to delay or hold up hearing of the bail applications till the Chief Secretary files his response to CBI's report.

The bail applications will again be listed on July 12, 2024, marked 12 p.m. On that day, if Mr. Trivedi, learned Deputy Solicitor General representing the CBI, wishes to argue as a preliminary issue that prior to taking up the bail petitions for hearing, the issue regarding sanction to prosecute should be sorted out, he will be at liberty to do so."

8. The above orders clearly show that inspite of direction from this Court and further, inspite of undertaking given by the Chief Secretary to the Government of West Bengal, the State didn't decide on the issue of sanction till date. This gives credence to the claim of the CBI that the State is trying to protect the interest of the above accused persons, and had the issue of sanction been done in right time, the alleged delay would not have happened. Further the dragging

of feet on behalf of the State over the matter would clearly show that the applicants are still influential and their influence is so much so that the State is not willing to take any decision against them. The FIR was registered at the instance of this Court for investigation of serious allegation regarding appointment of school teachers and Group C staff in lieu of huge sum of money, and not any State authority but CBI was asked to investigate the allegations. Manipulation of marks of competent and successful candidates, destruction of OMR Sheets, appointment of undeserving candidates, appointment of persons who didn't even appear in the examination etc were done allegedly at the instance and with active connivance of the applicants. The then State Education Minister and some of the highest authorities in School education system were allegedly directly involved in the serious scam causing irreparable damage to the career of a huge number of young educated people. In spite of such serious allegation against the applicants, the State Government does not find it appropriate to decide the issue of sanction at the right earnest. Pertinently, the sanction to prosecute Dr. Chatterjee was issued by the Hon'ble Governor as per requirement of law. Therefore, the apprehension that if the applicants are enlarged on bail, the manipulation and influencing evidence/witnesses are only matters of time, cannot be said to be misplaced in view of the totality of the circumstances revealed in this case.

9. Another important aspect which should not be lost sight of us is that can we allow the State Government to interfere with the judicial proceedings indirectly

by not taking any decision on the issue of sanction and thereby stalling the entire judicial proceedings and enabling its confidantes to obtain bail on the plea of delay in proceedings? When the office of the Hon'ble Governor or Speaker can apply their mind to take decision on issue of sanction in respect of other accused, what prevented the State authority to take a reasoned decision on the matter? The allegation of nexus, as made out by the CBI, between the present applicants and certain sections of the State cannot be thrown out. Even the orders of the Hon'ble Co-ordinate Bench mentioned above clearly indicate such nexus between the above applicants and State Machinery. It is revealed from those orders that the Chief Secretary has been directed to remain uninfluenced from any external factors. The Hon'ble Co-ordinate Bench also apprehends, inter alia, that 'malefic influence' of the accused persons who held prominent posts in public administration including one who was a former minister may be the underlying reason for such 'recalcitrant attitude' of the Chief Secretary. No appeal or revision is taken out from the side of the applicants to challenge such observations of the Hon'ble Court. Therefore, such observation against the State Authority and the applicants above by the Hon'ble Coordinate Bench makes the present case different from **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),(2020) 13 SCC 791 (P. Chidambaram Vs. Directorate of Enforcement), 2024 SCC OnLine SC 2550 (Arvind Kejriwal Vs. Central Bureau of Investigation) and Criminal Appeal No. 4011 of 2024 arising out**

of SLP (Crl). No. 3986 of 2024 (V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement). There is no indication in those cases from the Hon'ble Court that the State authority is protracting the trial of the relevant proceeding at the behest of the accused persons. The instant case is, therefore, an exception to the general rule. The audacious attitude of the State not only interferes with smooth functioning of judicial proceedings but also abuses the process of the Court.

Relevancy: Sections 167(2) & 309(2) Cr.P.C.

10. The learned Senior Counsels opined that in that event the CBI could have moved the writ jurisdiction of the Court, and a court having jurisdiction to deal with applications under section 439 Cr.P.C. cannot direct the State to grant sanction for prosecution. Further, when investigation is complete and chargesheet submitted, remanding the accused to judicial custody without taking cognizance, is completely illegal in view of section 309(2) of Cr. P. C.

11. Be it mentioned, the Hon'ble Coordinate Bench never directed the State to grant sanction, rather it asked the state to decide the issue of sanction expeditiously. It is true that remand of the accused can be done either under section 167(2) or 309(2) of Cr. P. C. When a chargesheet is filed, the court can remand the accused under section 309(2) of the Code only after taking cognizance. But in this case, a peculiar circumstance arises. Charge sheet has been filled but sanction from the state is awaiting for more than two years and thereby the trial court has been put in an awkward position. The Code doesn't

specifically prescribe the duty of the trial court in such circumstances. However, I am unable to accept the learned Senior Counsels' contention that the Hon'ble Coordinate Bench did not have the authority to issue direction over the matter.

Section 482 Cr.P.C. : the Panacea

12. Section 482 of Cr.P.C. is the repository of inherent powers of the High Court. It has empowered only the High Court to pass appropriate orders to prevent the abuse of process of any Court or otherwise to secure ends of justice. This is not an ordinary power. By such provision of law, the legislature in its wisdom has harnessed the High Court with unlimited powers to issue appropriate orders to prevent abuse of process of any Court or otherwise to secure the ends of justice.

13. For convenience, the provision of Section 482 of Cr.P.C. may be recapitulated.

“Section 482: Saving of inherent powers of High Court -- *Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice.”*

14. It is settled principle that application of Section 482 Cr.P.C is to be done when there is no specific provision in the Code to deal with a particular situation, and further, such power can be exercised sparingly, and only in the 'rarest of the rare case'. The High Court can exercise such power only to secure ends of justice or to prevent abuse of process of any Court under its superintendence.

15. In our case, the chargesheet has been filled but it is anybody's guess when the State would decide the issue of sanction. The Code doesn't specify the duty of the trial court in such an event. The investigation discloses that the offences have been committed in an organized and pre-planned manner from some higher echelons of the State authority by changing relevant rules etc. and lives of a large member of innocent young educated people were sacrificed at the instance of the applicants upon whom the Society at large reposed great trust and faith. The applicants are still influential since the State is indirectly refusing to decide on the issue of sanction, inspite of being directed by the Hon'ble Court on several occasions, and if such audacious attitude of the State is not appropriately taken care of, the majesty of the Court may suffer. Further, it would give a wrong signal, and create a bad precedent too. If such an audacity occurs in High Court, I am afraid, what would, then, happen in District Courts!! This is certainly a case of exceptional nature. Even at the cost of repetition, I must say that when the Hon'ble Governor or Hon'ble Speaker can decide the issue of sanction, there is no justifiable ground for the State Authority to sit tight over the matter.

15.1. The Petitioner Dr. Chatterjee claims that the relevant rule i.e. West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules 2018 is still a good law since the same has not been declared invalid by any court of law nor any challenge has been made against such rule. If action is taken under such valid statute or statutory rules, how can the same be termed as illegal. Needless to mention, organized crimes are committed in a pre-planned and premeditated manner. The provisions of law do not suggest, inter alia, that OMR Sheets are to be manipulated or destroyed, or the marks of undeserving candidates are to be enhanced/manipulated over the marks of deserving candidates. Moreover, the provisions of law do not indicate that the persons who did not even appear in the examination shall be shown as successful candidates. The point is that to misuse the provisions of law, and statutory rules, Dr. Chatterjee and his aides allegedly worked in an organized, premeditated manner. Dr. Chatterjee occupied such a high position in the Education department at the relevant time that the same had been used to change the relevant rules in 2018 to suit their alleged purpose. Therefore, it is not acceptable at this stage that even though he was the Minister-in-Charge, Education Department, he was unaware of the workings of WBCSSC or WBBSE regarding appointment of Teachers and Staff, and hence, he cannot be fastened with criminal liability. There are sufficient prima facie materials showing that those who were trying to raise their voices regarding alleged illegalities/irregularities, were coerced by removing them from their posts or by serving show-cause notices upon them.

15.2. Dr. Chatterjee had also claimed that the prosecution did not proceed with his case though sanction to prosecute him was granted by the competent Authority.

15.3. It has already been discussed that inability to proceed with the trial of Dr. Chatterjee cannot be attributed to the CBI since the State Government is dragging its feet over the issue of sanction in respect of other accused for years together. The nature of the case is such that joint trial of all the accused is absolutely necessary. Therefore, due to laches of the State Government, his trial cannot be commenced until the cases are ready for joint trial of all the offenders.

15.4. However, all the above applicants claim that no money trail has been found in respect of each of them. But if one's act allows others to amass wealth, money etc., such action on the part of the former is also penal and punishable. There are sufficient prima facie materials to show that the public employment has been distributed to undeserving and unsuccessful candidates at a price.

15.5. The petitioner Dr. Kalyanmoy Ganguly claimed that the Hon'ble Coordinate Bench granted him bail on 29/11/2023 by a detailed reasoned order in RC no 05/2022 and, therefore, there is no reason for this Bench to take a different stance.

15.6. Admittedly, the Hon'ble Coordinate Bench enlarged Dr. Ganguly on bail on 29/11/2023 in connection with RC no. 05/2022 on the grounds, inter alia,

that there is no chance of an early conclusion of trial since the State is dragging its feet over the issue of sanction. But after a few months when the State was found still maintaining a stoic silence over the relevant issue, the same Coordinate Bench dealing with bail applications of other accused persons in the self-same cases or connected cases came down heavily on the State and it's Chief Secretary indicating malefic influence of the accused, which obviously includes Dr. Ganguly, may be the underlying reason for recalcitrant attitude of the State Chief Secretary for not deciding on the point of sanction, and the orders passed by the coordinate bench on 22/03/2024, 03/04/2024, 09/04/2024, 23/04/2024, 03/05/2024, 07/05/2024 show that the Coordinate bench has changed its stance from earlier one after it passed the bail order dated 29/11/2023. The tenors of the orders dated 22/03/2024, 03/04/2024, 09/04/2024, 23/04/2024, 03/05/2024, 07/05/2024 are totally different from the order dated 29/11/2023. The said Bench didn't pass any order on the bail applications filed by the other accused in the self-same cases mentioned in the cause title of the instant matters and even by Dr. Ganguly in RC 03A/2022, and the Coordinate Bench concentrated only to deal with the issue of sanction. Therefore, it appears that the Hon'ble Coordinate Bench changed its stance from earlier one and did not take up the bail prayers of the allegedly similarly situated accused persons including Dr. Ganguly in RC 03A/2022, readily or soon after passing of the order dated 29/11/2023, and the Bench, on the contrary, started questioning the authority of the Chief Secretary for deferring the decision on sanction. In view of such a shift in

stances of the Hon'ble Coordinate Bench, the liberty to claim parity on behalf of the accused including Dr. Ganguly (in connected case i.e. RC 03A/2022), on the basis of order dated 29/11/2023 has been diluted by the order dated 22/03/2024 and subsequent orders.

15.7. All the petitioners claim that they are aged and ailing persons and as such their applications for bail should be considered sympathetically. Unfortunately, the allegations against the petitioners are that inspite of being the senior citizens and father figure of the state education system they didn't consider at the relevant time the future and career of hundreds of young people who were like their sons and daughters.

'Reasonableness'- a basic constitutional theme

16. One of the precious themes of our constitutional scheme is the concept of 'reasonableness'. Every state action must be guided by the principle of 'reasonableness'. When there is no such reasonableness in any State action, the same is violative of constitutional scheme. Needless to mention, the Constitution is the mother of all Statutes and Acts in India. Therefore, even if a statute doesn't not specify a time limit for any proposed state action, such action must be done within a reasonable time and cannot be deferred for an indefinite period taking advantage of absence of time period in the statute. The principle of 'reasonableness' is so much embedded in our Constitution that such a principle can be read into the provisions of the Statute which does not have any specific provision relating to time period for any state action.

Therefore, though there is no specific provision either in the Cr.P.C or in the Prevention of Corruption Act within which the authority concerned is to decide on the issue of sanction, the principle of 'reasonableness' embedded in our mother law dictates that such action is to be completed within a reasonable time period. In our case, it is anybody's guess when the state would complete the process, and such non-action, therefore, on the part of the State clearly militates against the constitutional theme of reasonableness. The apathy of the State has, undoubtedly, created a serious legal crisis in the judicial proceedings under reference.

Conclusions: Remedy lies in Section 482 Cr.P.C.

17. However, as the provision of section 482 Cr.P.C. has empowered the Concerned High Court to make appropriate orders to prevent the abuse of process of any Court and otherwise to secure ends of justice, I direct the State to decide the issue of sanction within fortnight from date and in default, the State shall be deemed to have sanctioned the prosecution in respect of the applicants as prayed for by the CBI, and the trial court shall proceed with the case in accordance with law, and further neither the State nor the applicants at any stage of the subsequent proceedings can take the plea of deficiency in process of sanction.

18. The judicial decision reported **in (2023) 1 Supreme Court Cases 329 [Vijay Rajmohan Vs. Central Bureau of Investigation]** did not consider the provision of section 482 of Cr. P.C nor the same was placed before the Hon'ble

Supreme Court for consideration whether, in the peculiarity of facts and circumstances of a case, the provision in the above section can be used to expedite the process of obtaining sanction from the competent authority , particularly when lack of sanction makes the judicial proceedings inept.

19. However, as the record reveals that the interests of the applicants are being indirectly protected from some sections of the State authority, the apprehension that if they are enlarged on bail, there would be serious predicament in bringing home the charges against the applicants , can be said to have been well founded. Moreover, I do not find any material to show that the delay caused can be attributed to the CBI or the Prosecution in this case. Further, the record reveals that the present applicants were the mastermind and they orchestrated the entire scam. They cannot be equated with the accused like Prasanna Kumar Roy, Jiban Krishna Saha who actually acted as touts or collecting agents. The five applicants namely Dr. Subires Bhattacharya @ Subiresh Bhattacharjee, Sri. Ashok Kumar Saha, Dr. Kalyanmoy Ganguly, Sri. Santi Prasad Sinha, Dr. Partha Chatterjee as stated above are still influential, and there are chances of manipulating, influencing, intimidating witnesses, if they are enlarged on bail. In view of the above, I am not inclined to allow the prayers for bail of the said applicants at this stage. Accordingly, the relevant bail applications are rejected.

20. The learned Registrar General is requested to communicate this order to the Chief Secretary, Government of West Bengal and also to the learned Trial Court immediately.

PART – B

In Re: Koushik Ghosh, CRM (DB) No. 481 of 2024 (arising out of RC No. 03A of 2022)

In Re: Sk. Ali Imam & Md. Sahid Imam CRM (DB) No. 248 of 2024 (arising out of RC Case No.03A of 2022)

In Re: Subrata Samanta Roy @ Babu., CRM (DB) No. 2562 of 2024 (arising out of RC case no. 02A of 2022)
and

In Re: Subrata Samanta Roy @ Babu., CRM (DB) No. 2564 of 2024 (arising out of RC case no. 03A of 2022)

In Re: Chandan Mondal @ Ranjan, CRM (DB) No. 2543 of 2024 (arising out of RC No. 05A of 2022)

1. After considering the bail applications of Koushik Ghosh, Sk. Ali Imam, Md. Sahid Imam, Subrata Samanta Roy @ Babu and Chandan Mondal @ Ranjan, I find that they cannot be said to be the mastermind of the scam as referred to above. Their status and role prima facie show that they acted as touts or agents for fetching illegal money from the undeserving candidates. They may be granted bail. Accordingly, the relevant bail petitions filed by the above applicants are allowed on the conditions as stipulated by my learned Senior Brother in the respective bail orders passed by His Lordship.

(Apurba Sinha Ray, J.)

Later:-

In view of the difference of opinion between the two of us as regards CRM (DB) 173 of 2024, CRM (DB) 172 of 2024, CRM (DB) 418 of 2024, CRM (DB) 427 of 2024, CRM (DB) 467 of 2024, CRM (DB) 823 of 2024, CRB (DB) 818 of 2024, CRM (DB) 822 of 2024 and CRM (DB) 583 of 2024, let those bail applications be placed before the Hon'ble The Chief Justice for appropriate direction.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)