

03.10.2024
Item no. 32.
Court No.28.
AB
(Rejected)

CRM (DB) 2851 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure, 1973/Under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Bhawanipore /DD Police Station Case No.294 of 2022 Dated 12.12.2022 under Sections 395/397/170/467/468/471/120B 34 of the Indian Penal Code read with Section 25(1B)(a)/27 of the Arms Act

And

In the matter of : Rajab Ali Gayen

.....Petitioner.

Mr. Joydeep Biswas,
Mr. Kaushik Ghoshfor the Petitioner.

Mr. R. Nandy, Id. APP
Mr. Arindam Sen,
Ms. Purnima Ghoshfor the State.

Dictated by Apurba Sinha Ray, J.

1. Learned Counsel for the petitioner has submitted that the petitioner has been entangled in this case on the basis of statement made by a co-accused person. Nothing was recovered from him excepting one gold ring and one pendant. He was not present at the place of occurrence. Learned Advocate has also pointed out that at the time of seizure of stolen gold ornaments from his house, the wife of the petitioner was not made a seizure witness and as such, there is no legal value of such seizure. The petitioner may be enlarged on bail on any condition in view of his long incarceration.

2. Learned Advocate for the State opposes the prayer for bail. According to him, one of the cars used in the commission of the dacoity belonged to the present petitioner and there are sufficient materials showing that the concerned persons used the said car at the time of commission of the alleged offence. Moreover, the gold items recovered from the house of the present petitioner were duly identified at the time of TI parade. If the present petitioner is enlarged on bail, the prosecution may suffer.

3. We have gone through the materials on record. There are prima facie materials showing that some of the stolen gold ornaments were recovered from the house of the petitioner and one of the cars used at the time of commission of the offence belongs to the present petitioner. If convicted, the petitioner may attract imprisonment for life.

4. Learned Advocate for the petitioner relies on a decision of the Hon'ble Supreme Court in the case of ***Javen Gulam Nabi Shaikh Vs State of Maharashtra 2024 SCC Online SC 1693***. He says that in that case, even where charge is under the Unlawful Activities (Prevention) Act, 1967, the Hon'ble Supreme Court was pleased to enlarge the petitioner on bail only on the ground of long incarceration of the petitioner in that case. In the present case also, since the petitioner is in custody for about one year and ten months, he should be enlarged on bail.

5. We find that in the aforesaid case, the concerned accused person was in custody for more than four years. In the present case, the petitioner is in custody for about one year and ten months. Considering the custodial detention of the petitioner, we have directed the trial to be expedited and concluded within ten months.

6. In view of the aforesaid, we are not inclined to allow the application for bail, at this stage.

7. The prayer for bail stands rejected.

8. CRM (DB) 2851 of 2024 is dismissed.

9. However, since the petitioner is in custody for a considerable period of time, we direct the learned Trial Court to expedite the trial and conclude the same at an early date but positively within ten months from the next date fixed and, if necessary, frequent schedules of 2/3 dates or more shall be fixed by the learned Trial Court.

10. Registry as well as the parties shall communicate this order to the learned Trial Court.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)