

46.
28-11-2024
(ct. no.29)
S. De
(Allowed)

CRM (DB) 2944 of 2024

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure as amended under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with **Nabagram Police Station Case No. 35 of 2023** dated **06.02.2023** under **Sections 341/325/326/307/302/34** of the Indian Penal Code.

And

In the matter of : Asif Hossain.

.....Petitioner.

Mr. Bibaswan Bhattacharyya,
Mr. Ali Ahasan Alamg,
Ms. Soma Mal,
Ms. Rabia Khatoon,
Ms. June Modak,for the Petitioner.

Ms. Faria Hossain, Ld. APP,
Md. Sayeed Khan,for the State.

Dictated by Arijit Banerjee, J.

1. The petitioner renews his prayer for bail which was rejected twice, lastly on December 20, 2023. At the time of rejection of his first application for bail which was made with other co-accused persons, on July 19, 2023, a co-ordinate Bench observed as follows :

“Statements of witnesses consistently refer to petitioner nos.1, 2 & 3 as the miscreants who were present at the spot. Name of the petitioner no.4 has been taken by only one witness and not corroborated by others. Under such circumstances, we are of the opinion

further detention of the petitioner no.4 is not necessary.”

2. The petitioner says that the three witnesses on whose statements recorded under Section 164 Cr.P.C., the co-ordinate Bench relied in rejecting his prayer for bail on July 19, 2023, have all been examined being PW-1, PW-3 and PW-4. PW-3 and PW-4 stated in their evidence that they recorded statement before the Magistrate as tutored by the police. PW-1 being the de facto complainant stated in his deposition that he was not present at the place of occurrence.
3. The petitioner further says that he is in custody for about 1 year 10 months. Only 7 out of 33 chargesheet named witnesses have been examined. There is no possibility of an early conclusion of the trial.
4. Learned advocate for the State while opposing the prayer for bail, draws our attention to the statement of an injured victim recorded under Section 164 Cr.P.C. That person has not yet been examined before the learned Trial Court. Learned advocate says that there is sufficient incriminating evidence against this petitioner.
5. We find it strange that PW-1, PW-3 and PW-4 have not been declared hostile by the prosecution in spite of they deposing against the prosecution case. Be that as it may, the deposition of the aforesaid three prosecution witnesses have, prima facie, made a significant dent in the prosecution case.

We also see that there is little possibility of early conclusion of the trial.

6. On an overall consideration of the aforesaid facts and circumstances of the case, we are inclined to grant bail to the petitioner.
7. Accordingly, we direct that the petitioner, namely, **Asif Hossain**, shall be released on bail upon furnishing a bond of Rs. 10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Additional Chief Judicial Magistrate, Lalbagh, Murshidabad subject to the condition that the petitioner shall not enter the jurisdiction of Nabagram police station except for the purpose of attending Court proceedings and shall also furnish the address where he will be residing to the Officer-in-Charge in whose jurisdiction he will be residing and shall also appear before such Officer-in-Charge once in a fortnight until further orders.
8. The petitioner shall appear before the trial Court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.
9. In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.
10. The application for bail is, accordingly, allowed.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)