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Allowed

C.R.M. (DB) No. 4061 of 2023

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Gariahat Police Station Case No. 329 of 2019 dated 12.12.2019 under Sections 302/394/34/120B of the Indian Penal Code.

And

In Re : Kunica Jund @ Guria petitioner

Mr. Deepak Prahladka

Ms. Reshmi Khatun

Mr. Sarfaraz Hossain

.....for the petitioner

Mr. Ranabir Roy Chowdhury

Mr. Mainak Gupta

.....for the State

1. Learned Counsel for the petitioner submits she is in custody for more than four years. She contends she was a juvenile in conflict with law. There is inordinate delay in trial and only one witness has been examined in full and another witness has been examined in part. She prays for bail.

2. Learned Counsel for the State opposes the prayer for bail and submits there are ample materials to implicate the petitioner in the offence. She is being tried as an adult. Delay in the matter was due to circumstances beyond the control of the prosecution.

3. We have considered the materials on record. Petitioner who was a juvenile at the time of occurrence had been charged along with other adult accused. Trial of the adult

accused proceeded in accordance with law and ten witnesses have been examined. In the meantime, petitioner was directed to be tried as an adult. Her trial is presently pending before the Children's Court and only one witness has been examined in full. Splitting the case into two trials has resulted in delay. Though the prosecution cannot be held responsible it is also apposite to note petitioner has not contributed to the delay. Prosecution proposes to examine no less than twenty five witnesses. Trials are continuing in different courts and as documents and exhibits cannot be produced in both courts simultaneously there is delay. No doubt the offences are grave but petitioner has already suffered incarceration for more than four years. She was juvenile at the time of occurrence. There is no chance of abscondence. Under such circumstances, we are inclined to grant bail to the petitioner.

4. Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two registered sureties of like amount each to the satisfaction of the learned Additional Sessions Judge, 1st Court and Children's Court, Alipore, South 24 Parganas, subject to conditions that 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.

5. In the event she fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel her bail in accordance with law without further reference to this Court.

6. The application for bail is, accordingly, allowed.

7. In view of the fact that delay in the matter is due to trials continuing simultaneously in two courts we direct as follows :

- (i) Case of co-accused viz. Sourav Puri and Dimple Jund, pending before the learned additional Sessions Judge, 1st fast Track Court, Alipore, South 24 Parganas to be transferred to the learned Additional Sessions Judge, 1st Court, Alipore, South 24 Parganas-cum-Children's Court and be tried from the stage it has already arrived at;
- (ii) Both the cases i.e. one against the petitioner and the other against the adult accused shall be tried one after another but separately;
- (iii) The cases shall be disposed of expeditiously preferably within one year from the next date fixed for recording evidence in the said cases. Parties shall co-operate with the trial court in expeditious disposal of the cases.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

