

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

01.04.2024
Court No.01
rpan /14

CRM (DB) 79 of 2024

In Re:- An application for bail under section 439 of the
Code of Criminal Procedure;

And

In Re: Pradip Mahanto @ Pradip Mohanto

...Petitioner.

Ms. Radhika Agarwal,

Mr. Dhiraj Lakhotia,

Ms. Meghana Joshi,

Ms. Khushi Kundu

.... for the petitioner.

Mr. Abhijit Sarkar,

Mr. Biswarup Roy

...for the State

The present application under Section 439 of the Code of Criminal Procedure has been preferred in connection with Kharibari Police Station Case No.259 of 2018 dated 21.11.2018 under Sections. 379/413/414/34 of the Indian Penal Code [Charges framed under Section 379/414/34 of the Indian Penal Code and Section 14(A) of the Foreigners Act].

Ms. Agarwal, learned advocate appearing for the petitioner submits that the petitioner is languishing in custody since 23rd November, 2018 and there is no possibility towards conclusion of the trial in the near future. The petitioner has approached this Court for the first time and he had been roped in on the basis of suspicion and arrested. Long pendency of

the trial justifies the petitioner's prayer for bail on the anvil of delay. She argues that deprivation of personal liberty without ensuring speedy trial would not be in consonance with the right guaranteed under Article 21 of the Constitution and in the said conspectus, further detention of the petitioner is not warranted. The petitioner is entitled to the benefits of the provisions of Section 436-A of the Code of Criminal Procedure as he has already suffered half of the sentence. Reliance has been placed upon the judgment delivered in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*, reported in (2022) 10 SCC 51.

Mr. Roy, learned advocate appearing for the State opposes the petitioner's prayer and submits that in the event the petitioner is granted bail there is every possibility that he would flee from justice. He further submits that out of 12 witnesses, six had already been examined. The delay which has occurred is not entirely attributable to the State.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Prima facie, from the sequence of fact it appears that the petitioner cannot be held responsible for the delay which has occurred. The exposition of Article 21 in the case of *Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna*, reported in (1980) 1 SCC 81 was exhaustively considered afresh in the case of *Abdul Rehman Antulay and*

Ors. Vs. R.S.Nayak and Anr., reported in (1992) 1 SCC 225 and it was *inter alia* observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice.

Applying such proposition of law to the facts of the present case, we are of the opinion that further detention of the petitioner is not necessary.

Accordingly, we direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the Chief Judicial Magistrate, Siliguri with a further condition that he shall reside in the address given cause title of the application and shall meet with the Officer-in-Charge, Kharibari Police Station once a week until further orders. He shall also attend the learned trial Court on all the dates as fixed for hearing.

It is further directed that the petitioner shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without justifiable cause, the learned Court below shall be at liberty to cancel the petitioner's bail without any further reference to this Court.

With the above observations and direction, the application for bail, being CRM (DB) 79 of 2024, is disposed of.

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

(Biswaroop Chowdhury, J.) (Tapabrata Chakraborty, J.)