

13.08.2024.

Item No. 8
Court No.1
ap

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE*

C.R.M. (DB) No. 266 of 2024

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 filed on 24.05.2024 in connection with Mekhliganj Police Station Case No. 01 of 2024 dated 02.01.2024 under Section 14A/14C of the Foreigners Act, 1946.

And

In the matter of: **Ahmed Khan @ Mohammad Shah Morad.**
...petitioner.

Mr. Jewel Chanda. ...For the petitioner

Mr. Aditi Shankar Chakraborty, ld. APP,
Mr. Nilay Chakraborty.For the State

1. Investigating Officer of the case has submitted a report indicating that the verification of Aadhaar Card could not be completed as the SIM Card of the Mobile Number was registered with the UIDAI Authority, is not available in the Mobile Phone of the petitioner. A Bangaldeshi SIM Card appears to have been found with the accused.

2. Counsel for the petitioner submits that he has birth certificate issued by the Kolkata Municipal Corporation and also has a Aadhaar Card and PAN Card. It is further submitted that two co-accused persons have been granted bail, one by the Trial Judge and one by a Co-ordinate Bench of this Court.

3. Admittedly, the petitioner is the principal accused.

4. The birth certificate appears to have been obtained in the year 2018. Counsel for the State submits that upon verification, Kolkata Municipal Corporation has no records of any birth certificate issued to the petitioner. The petitioner claims that he is about 30 years old today.

5. Admittedly, an Afghan Passport was found from the possession of the petitioner. He was arrested on the border between India and Bangladesh.

6. Counsel for the petitioner further submits that since the charge-sheet has been filed one day after the statutory period, his client is entitled to statutory bail even otherwise.

7. Having carefully considered the materials in the case diary and the arguments of the learned Counsels for the petitioner and the State, this Court is not prima facie satisfied with the genuineness of the documents produced by the petitioner. The petitioner will get an opportunity to produce the same in course of trial.

8. The delay of one day of filing of charge-sheet beyond the statutory period in the facts and circumstances of the case, cannot be considered too serious. Even as on date some of the documents of identity relied upon by the petitioner, could not be verified by the Investigating Officer of the case. Such Authorities are not under the control of the Investigating Officer of the case. As regards the co-accused persons being granted bail, this Court

notes that they have been produced their voters' identity cards before the Benches concerned, which were found to be genuine.

9. This Court is, therefore, of the view that while the period of incarceration of the petitioner of 224 days, could throw up questions under Article 21 of the Constitution of India, in the facts and circumstances of the case, this Court is not inclined to allow the application for bail.

10. Since it is submitted that there are 14 witnesses cited by the prosecution, it is expected that the examination of the said witnesses is completed as expeditiously as possible, preferably within a period of eight months from date and the Trial is concluded immediately thereafter.

11. In the aforesaid case, the Trial Court shall immediately prepone the date of examination of the first prosecution witness within this month.

12. With the aforesaid observations, C.R.M. (DB) No. 266 of 2024 is, thus, disposed of.

13. Registry of this Court shall communicate this order to the concerned Trial Judge forthwith.

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

(Ajay Kumar Gupta, J.)

(Rajasekhar Mantha, J.)

