

27.03.2025
Item no.39.
Court No.29.
S. De
(Rejected)

CRM (DB) No. 326 of 2025

In Re: An application for bail under Section 439 of the Code of Criminal Procedure corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

And

In the matter of : Aksar Sk @ Akchar Sk @ Akchhar Ali Sk.
...Petitioner.

Mr. Jaydeep Biswas,
Mr. Amanul Islam,
Mr. Sourav Mukherjee,
Mr. Kaushik Ghosh,for the Petitioner.

Mr. Arijit Ganguly,
Mr. Soumadip Saha,for the State.

Dictated by Arijit Banerjee, J.

1. Status report filed by the State, be kept with the records.
2. As often happens, this report is also completely useless. It does not indicate how many witnesses the prosecution intends to examine.
3. Be that as it may, we find that by an order dated March 17, 2025, passed in CRM (DB) 336 of 2025, this Bench had rejected the bail prayer of a co-accused person by the name of Arnab Sarkar @ Guddu. For the sake of convenience, we quote paragraphs 1 to 5 of the said order.

“1. The petitioner renews his prayer for bail which was rejected earlier on three occasions, lastly on April 29, 2024. We see that once the petitioner had approached the learned Supreme Court by filing Special Leave Petition (Criminal) Diary No. 40165/2023. By an order dated October 20, 2023, the Hon’ble Court was

pleased to dismiss the Special Leave Petition, clarifying that “in case of change in circumstances or if the trial gets prolonged due to reasons not attributable to the petitioner or co-accused, it will be open to the petitioner to file a fresh application for bail/suspension of sentence.”

2. The petitioner says that after that order was passed by the Hon’ble Supreme Court, the trial has not progressed appreciably. Till date only 1 out of 27 witness has been examined. He is in custody for 3 years and 9 months. On the touchstone of Article 21 of the Constitution of India, he should be granted bail.

3. Learned State counsel tells us 2 out of 27 witnesses have been examined by the prosecution. The delay is due to the absconsion of co-accused persons including the petitioner’s father. She points out that the Hon’ble Supreme Court granted liberty to the petitioner to renew his prayer for bail on the ground of delay if the delay is not attributable to the petitioner or co-accused persons. Since the trial has been delayed due to the absconsion of the co-accused persons, the petitioner’s renewal prayer should not be entertained.

4. We tend to agree with learned State advocate. We further see from the case diary that there are sufficient incriminating material against this petitioner. The charge is of murder. If convicted, the petitioner has to serve mandatory life sentence.

5. On an overall assessment of the material-on-record and the possible extent of complicity of the petitioner in the alleged crime of murder

and noting that the delay in progress of trial is not attributable to the prosecution but to the co-accused persons who are still absconding and who are relatives of the petitioner, we are not inclined to entertain the prayer for bail of the petitioner.”

4. In the present case, we find that the petitioner is in custody for about 3 years and 10 months. Only 2 out of 27 chargesheet named witnesses have been examined. Early conclusion of the trial is a far cry. However, the delay appears to be because of the absconsion of a co-accused person who is now in custody. The Hon’ble Supreme Court indicated that if the delay is not on account of the petitioner in that case or co-accused person, the petitioner in that case could apply afresh for bail.
5. Since, in the present case, we find that delay is due to a co-accused person’s absconsion, we are unable to grant bail to the petitioner immediately.
6. CRM (DB) 326 of 2025 is dismissed.
7. We see that the trial has commenced. However, keeping in mind the long detention of the petitioner in custody, we direct the learned Trial Court to expedite the trial to the fullest extent and conclude the same on an early date without granting unnecessary adjournments to either of the parties and by fixing frequent schedules of 2/3 dates each for examination of witnesses. The Trial Court should keep in mind that keeping an undertrial accused person in custody for an unreasonably long period of time without taking the trial to its logical conclusion infringes that person’s fundamental right to personal liberty and

speedy trial as enshrined in Article 21 of the Constitution of India, which ordinarily overrides all other considerations.

8. We further clarify that if the trial is not concluded within a reasonable period of time, for no fault of the petitioner, the petitioner may renew his prayer for bail.
9. Let this order be communicated by the parties to the learned Trial Court.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)