

05.06.2025
Item No.11
Court No.6
Susanta/
Aminur
(Allowed)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION**

CRM(M) 579 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 in connection with S.T. No. 5(3)2023 arising out of Newtown Police Station Case No.694 of 2016 dated 10.12.2016 under Section 376 of the Indian Penal Code and Section 6 of POCSO Act.

-And-

In the matter of : Chitta Mondal

... Petitioner

Mr. Mauukh Mukherjee.,
Mr. Abhijit Singh,
Ms. Sarmistha Basak,
Mr. Samrat Mandal,

...For the petitioner.

Ms. Suchismita Dutta,

.... For the de facto complainant.

Ms. Debjani Sahu,

... For the State.

Learned Advocate for the petitioner, learned Advocate for the State and the learned advocate for the de facto complainant are present.

Heard learned Advocates for the parties.

Perused the materials in the case diary.

Learned advocate for the petitioner submits that his client is not involved in this case and the allegations made against his client are not maintainable.

Learned advocate further submits that his client is in custody for more than two years but till today only one witness has been examined.

It also submitted by the learned advocate that the medical examination report of the victim girl will not support the case of the prosecution.

Learned advocate appearing for the State draws attention to the statement of the neighbours and the statement of de facto complainant under Section 164 Cr. P.C. as well as medical examination report.

Learned advocate submits that the petitioner was absconding for a long period and his bail prayer should be rejected.

Learned advocate for the de facto complainant also submits that the victim girl was only three and a half years age and her statement could not be recorded.

Upon perusal of the materials in the case diary, it appears that the statement of the victim girl was not recorded under Section 164 Cr. P.C. and the victim girl was examined after a period of one and a half years from the date of the incident.

Learned advocate for the State opposes such prayer for bail.

Upon perusal of the statements of the neighbour and the de facto complainant in both under Section 164 Cr. P.C. and as well as under Section 161 Cr.P.C, there appears some contradictions but at this stage no observation should be made with regard to the merit of this case, but it is necessary to consider as to whether the petitioner should be granted bail as he is in custody for more than two years and at present one witness have been examined in this regard.

It is necessary to consider some judicial pronouncements.

The Hon'ble Supreme Court in the case of Arvind Kejriwal Vs. Central Bureau of Investigation reported in 2024 SCC online Sc 2550 observed as follows:-

The evolution of bail jurisprudence in India underscores that the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process'. The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty. This Court in Union of India v. K.A. Najeeb has expanded this principle even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter 'UAPA) notwithstanding the statutory embargo contained in Section 43-D(5) of that Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time. The courts would invariably bend towards liberty' with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law."

In the case of Mohd Tahir Hussain VS State of NCT of Delhi reported in 2025 SCC Online SC 135 the Hon'ble Supreme Court observed as follows:-

“I have examined the allegations and the evidence against the Petitioner. No doubt, they are grave and reprehensible but as of this moment they are exactly that - allegations. It is settled law that magnitude and gravity of the offence alleged are not grounds, in and by themselves, to deny bail [Para 18 12 of K A Najeeb (supra) and Jalaluddin Khan v Union of India, (2024) 10 SCC 574), more so when trial is prolonged. The Petitioner's rights under Articles 14 and 21 of the Constitution of India cannot be lost sight of. As on date, no court of law has convicted the petitioner. The following passage from Javed Gulam Nabi Shaikh (supra) is attracted squarely”.

“We may hasten to add that the petitioner is still an accused, not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

Upon considering that the petitioner was arrested on 07.02.2023, it further appears that he was arrested from his

place of residence and there is no prayer appearing in the case diary where the I.O. sought warrant of arrest against the petitioner. Thus, the case of willful abscondence of the petitioner cannot be observed at this stage. As the petitioner is in custody for two years one month and at present ten more witnesses are to be examined which may take a considerable period of time and it is found from the record that the witnesses have not turned up for a period of one year. in the interest of justice the petitioner should be granted bail.

Thus, I allow the prayer for bail made by the petitioner.

The petitioner be released on bail upon furnishing a bond of Rs.10,000/- (Rupees ten thousand), with two sureties of like amount each, one of whom must be a local, to the satisfaction of the learned Trial Court. The petitioner upon release shall meet the Officer-in-Charge of concerned Police Station once in a week, until further orders and shall appear before the trial court on each and every day of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973/Section 355 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever. The petitioner shall not enter within the territorial jurisdiction of concerned Police Station except for the purpose of attending court proceedings and for reporting to the Officer-in-Charge of the concerned Police Station, until further orders. The petitioner shall not meet the *de facto* complainant or the persons acquainted with the facts of the case and shall furnish the address where the petitioner shall presently reside before the learned trial court, the investigating officer and

the Officer-in-Charge of the police station under whose jurisdiction he shall presently reside.

In the event the petitioner fails to comply with any of the conditions as stated above, the learned Trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

Accordingly, the application for bail is disposed of.

(Biswaroop Chowdhury, J.)