

IN THE HIGH COURT AT CALCUTTA  
Criminal Appellate Jurisdiction  
Appellate Side

**CRA (DB) 276 of 2024**

**Abu Samad**  
**-Vs.-**  
**National Investigation Agency**

**Before: The Hon'ble Justice Arijit Banerjee**  
**&**  
**The Hon'ble Justice Apurba Sinha Ray**

For the appellant : Ms. Riya Jhapri, Adv.  
Mr. Rajeev Lochan, Adv.

For the N.I.A. : Mr. Arun Kumar Maiti (Mohanty), Spl. PP, NIA.  
Mr. Bhaskar Prosad Banerjee, Adv.  
Mr. D. Tandon, Adv.  
Mr. Arka Ghosh, Adv.  
Mr. Shyamal Kr. Ghosh, Adv.

CAV on : 16.12.2024

Judgment On : 22.01.2025

**Arijit Banerjee, J.:-**

1. The petitioner says that he is in judicial custody for more than 3 years 9 months. There is no material evidence against him. He has been arrested only on the basis of suspicion. No victim died in the alleged incident. He is a family man and by occupation, a truck driver. He has been arrested from

Jalpaiguri which is more than 500 kilometres away from the place of occurrence of the alleged crime.

2. The petitioner further says that there are 179 charge sheet named witnesses. Only 54 witnesses have been examined so far.

3. The petitioner further argued that however grave the alleged offence be, bail should be granted to an accused person if there is inordinate delay in the trial and the accused person is in incarceration for a long period of time. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Angela Harish Sontakke v. State of Maharashtra, reported at (2021) 3 SCC 723**, in support of the submission that even in a case of alleged offences under the Unlawful Activities (Prevention) Act, 1967 in spite of the restrictions in Section 43D (5) of the Act, bail was granted to the accused considering the extended period of custody and little possibility of early conclusion of the trial. Reference was also made to the case of **Union of India v. K.A. Najeeb, reported at (2021) 3 SCC 713**.

4. Learned Advocate for the National Investigating Agency (in short 'NIA') argued that considering the nature and gravity of the alleged offence which comes under a Scheduled Act, as per Central Government's order dated March 1, 2021, NIA took up the investigation and re-registered the case vide FIR no. RC04/2021/NIA/DLI dated March 2, 2021, under Sections 326, 307, 120B of IPC & Sections 3 and 4 of the Explosive Substances Act, 1908. After investigation, NIA filed the first chargesheet on August 24, 2021, under Sections 326, 307, 120B of IPC, Sections 3 and 4 of the Explosive Substances Act, 1908 and Sections 16, 18 & 20 of the UAPA Act, 1967.

Supplementary charge sheet under the same sections was filed on November 14, 2022.

5. Learned Advocate submitted that the total number of persons injured in the incident is 22 including a Minister in the Government of West Bengal who lost one of his fingers because of bomb blast. Some of the other victims lost vision in both eyes; some lost their hands and/or wrists. Some had their feet blown away.

6. It was further submitted that the total number of witnesses cited in the chargesheets was 139. However, the number of prosecution witnesses have been pruned. The prosecution has already examined 52 witnesses. It will examine 5 more witnesses including one protected witness, three technical witnesses from CFSL and CERT and the Investigating Officer. October 1, 2024 was fixed for recording evidence of protected witness no. 13. However, due to non-production of accused Isha Khan who was arrested by the State Police in connection with GR 2694/2024, the protected witness could not be examined on that date.

7. Learned Counsel for NIA further submitted that the appellant has suppressed material facts. The charging sections of UAPA have not been mentioned in the pleadings filed in this appeal. Further, learned Counsel for the appellant upon instructions have made incorrect statements before this Court by submitting that there is no progress in the trial. The order sheets and the depositions would demonstrate that the trial of the case has been proceeding with utmost expedition. There is no question of violation of the appellant's rights under Article 21 of the Constitution of India.

8. Learned Advocate, with reference to the depositions of the witnesses so far examined, submitted that the appellant was involved in making the bomb and did the recce for planting the bomb at the concerned station. PW 26, PW 28 and PW 11 have identified the appellant on dock during recording of their evidence. PW 22 has stated that another accused person namely, Sahidul took terrorist training from Pakistan. P.W. 17 identified the box grill done at the instance of Sahidul. Bail of the appellant at this juncture will delay and frustrate the trial. The appellant is a close associate of Accused No. 1. After committing a murder in the year 2010, the Accused No. 1 absconded for 10 years. If the present appellant, who is the Accused No. 2 is released on bail, he is very likely to abscond and frustrate the trial.

9. Before proceeding further, we may note the alleged incident. On February 17, 2021, at about 21:55 hours, a Minister of the State Government along with approximately 70 other persons who belong to the same political party arrived at Nimtita Railway Station, Murshidabad, West Bengal, for boarding a train. While the group was entering the platform, a bomb exploded causing serious injury to the Minister and 22 other persons. The blast also endangered the lives of a number of people who had assembled in the Railway Station in the usual course of business. Several people sustained serious injuries. Some of them lost their hands, their wrists. Some of them lost their feet and suffered grievous injury to their eyes resulting in loss of vision.

10. Therefore, we see that the alleged offence was heinous in nature. The petitioner is the accused no. 2 in the criminal case. Prima facie there appears to be sufficient evidence against the petitioner. We have gone

through the depositions of the witnesses already examined. They prima facie implicate the petitioner.

11. It also cannot be said that there is any inordinate delay in the trial. The charge sheet named witnesses numbered 139. However, the prosecution decided to examine 54 witnesses. 5 witnesses remained to be examined as on October 1, 2024. The trial is likely to conclude very soon.

12. We are conscious that an undertrial person cannot be kept in incarceration for a long period of time without taking the trial to its logical conclusion. However, there may be cases where a number of witnesses are required to be examined and numerous documents need to be exhibited. The trial may take some time. If a person is detained in judicial custody for a long period without there being any progress in the trial, surely that person can legitimately claim to be released on bail. However, we do not see that such is the case here.

13. A number of factors need to be considered for deciding whether bail should be granted in the case of a non-bailable offence. They are, inter alia:-

- (1) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence.
- (2) Nature of accusation and evidence therefor.
- (3) Gravity of the offence and punishment which the conviction will entail.
- (4) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail.
- (5) Means, position and standing of the accused in the society.
- (6) Reasonable apprehension of the witnesses being tampered with.

(7) Danger of justice being thwarted by grant of bail.

(8) Balance between the rights of the accused and the larger interest of the Society/State.

14. We have noted the sections of IPC and UAPA as well as the Explosive Substances Act, under which the petitioner has been charged. The charge under Section 307 of IPC (attempt to murder), if proved, may attract the punishment of imprisonment for life for the petitioner. The charges under Sections 3 and 4 of the Explosive Substances Act, 1908, if proved may attract life imprisonment or even death penalty if any special category explosive substance is involved. The charge under sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967, if established, will attract a minimum of 5 years imprisonment and a maximum of life imprisonment for the petitioner.

15. We, therefore, see that the petitioner is *prima facie* involved in an act of terrorism which is a grave offence. Terrorism is a crime against mankind. It compromises national security. If convicted, the petitioner will have to suffer severe punishment. There is sufficient *prima facie* evidence against the petitioner.

16. In view of the aforesaid, although the petitioner is in judicial custody for a long period of time, seeing that there has been no inordinate delay or stagnancy in the trial which is on the verge of being concluded, balancing the private right of the petitioner against greater public and societal interest, we are not inclined to allow the petitioner's prayer for bail.

17. The application for bail being CRA (DB) 276 of 2024 is accordingly dismissed.

18. However, considering the fairly long period of custodial detention of the petitioner, we request the trial court to conclude the trial as soon as possible.

19. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

**(Apurba Sinha Ray, J.)**

**(Arijit Banerjee, J.)**