

63. 06.02.2025
Court
No.29 (Tanmoy)

Allowed

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
CRM (DB) 3561 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 / Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with **Kashipur** Police Station Case No. **277/2023**, dated **10.06.2023** under Sections **147/148/149/341/302/109/120B** of the Indian Penal Code read with Sections **9B** Explosive Act 1884.

And
In the matter of: - **Mirajul Islam & Anr.**

Mr. Angshuman Chakraborty
Mr. S.S. Saha

Mr. Rana Mukherjee, APP
Mr. Parvej Anam

...petitioners.

...for the petitioners.

...for the State.

Dictated by Arijit Banerjee, J.

1. The petitioners renew their prayer for bail which was last rejected by a co-ordinate Bench on August 1, 2024, passed in CRM (DB) 2393 of 2024. They say that they have been falsely implicated. They may have been present at the scene of the alleged offence but they had no active role to play in such offence. They had no intention to kill anybody. They are in custody for one year and five months. The charge has also not been framed. There are 58 charge-sheet named witnesses.
2. While opposing the prayer for bail, learned Additional Public Prosecutor draws our attention to the statements of witnesses recorded under Section 164 of the Criminal Procedure Code, 1973. He also places before us an FSL report analyzing a video recording to impress upon us that these two petitioners were the main assailants.

3. We have considered the material on record. The prosecution may have an iron-cast case against these petitioners to secure their conviction. Nobody stands in the way of the prosecution to do so. However, an under-trial accused cannot be kept in indefinite incarceration without taking the trial to its logical conclusion. The petitioners are in custody for about one year and five months. Even charge has not been framed. The State says that it is not the fault of the prosecution since other accused persons were absconding. The process for issuance of Warrant, Proclamation and Attachment has been complete. If necessary, the trial will be split up and proceeded with against the accused persons in custody.
4. Whatever the State may do, we see that the trial has not even begun and there is no possibility of an early conclusion of the trial. Ordinarily, the fundamental right of a citizen to personal liberty and speedy trial must override all other considerations.
5. Without touching the merits of the case and solely on the touchstone of Article 21 of the Constitution of India, we are inclined to allow the petitioners' prayer for bail but on stringent conditions:
6. Accordingly, we direct that the petitioners, namely, **1. Mirajul Islam, 2. Md. Injamamul Haque** shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, South 24-Parganas, subject to condition

that the petitioners shall appear before the Trial Court on each and every date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973 / Section 355 of Bharatiya Nagarik Suraksha Sanhita, 2023, and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and on further condition that the petitioners, while on bail, shall not enter the geographical limits of the district of South 24-Parganas, but shall remain within the geographical limits of the district of Howrah, except for the purpose of attending Court proceedings and shall furnish their present address to the Inspector-in-Charge/Officer-in-Charge of Kashipur Police Station and shall also meet the Inspector-in-Charge/Officer-in-Charge of the local Police Station, within whose jurisdiction they will presently reside, once every week, until further orders.

7. In the event the petitioners fail to adhere to any of the conditions stipulated above without any justifiable cause, the Trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.
8. The application for bail being CRM (DB) 3561 of 2024 is accordingly disposed of.
9. Criminal Section is directed to make available urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)