

15.01.2025
Item no.24.
Court No.29.
S. De

CRM (DB) No. 3822 of 2024

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 : Shiba Shaw @ Shiva Shaw.
.....Petitioner.**

Ms. Minoti Gomes,
Mr. Pratip Mukherjee,
Mr. Purusattam Basak,for the Petitioner.

Mr. Debasish Roy,
Mr. Bidyut Kr. Roy,
Mr. Kausik Biswas,for the State

Mr. Sourav Mondal,
Ms. Banani Bhattacharyya,
...for the de facto complainant.

Dictated by Arijit Banerjee, J.

1. The petitioner renews his prayer for bail which was rejected earlier on merits on February 7, 2022. He says that he is in custody for about 3 years and 4 months. 25 chargesheet named witnesses remain to be examined. There is no possibility of an early conclusion of the trial. On the touchstone of Article 21 of the Constitution of India, he renews his prayer for bail.
2. The State files a status report. Let the same be kept with the records.

3. We find from the report that the State intends to examine 9 more witnesses who are mostly police personnel and doctors. The next dates fixed by the learned Trial Court are January 21, 2025, January 29, 2025, January 31, 2025, February 1, 2025 and February 7, 2025. The status report says that during those five days, the witness action shall conclude.
4. We are conscious of the importance of an undertrial's fundamental right to personal liberty and speedy trial enshrined in Article 21 of the Constitution of India. However, the same has to be juxtaposed against other factors like the gravity of the alleged offence, the manner of commission of the offence, the circumstances in which the offence is committed, the age of the victim and the maximum punishment that the alleged offence attracts. In the present case, we find from the deposition of the victim girl that the alleged offence is of a heinous nature. The victim girl was 9 years of age when the incident took place. The petitioner was 27 years old at that time.
5. Considering all the factors, in spite of long detention of the petitioner, we are not inclined to exercise our discretion in favour of the petitioner.
6. CRM (DB) 3822 of 2024 is dismissed.

7. However, considering the period of detention of the petitioner, we direct the learned Trial Court to make all possible efforts to expedite the trial and conclude the same on an early date in the light of the contents of the status report filed by the State today and also keeping in mind the spirit and intent of Section 35(2) of the POCSO Act.
8. Let this order be communicated by the parties to the learned Court below.
9. In the order dated January 6, 2025, the appearance of Ms. Minoti Gomes, Mr. Purusottam Basak and Mr. Pratip Mukherjee has been erroneously shown to be on behalf of the de facto complainant. In fact, they appeared for the petitioner.
10. Let the correction be incorporated in the order dated January 6, 2025.
11. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Ajay Kumar Gupta, J.)

(Arijit Banerjee, J.)