

CRM (DB) 4034 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure/Section 483 of the BNSS in connection with **Naihati Police Station** Case No. **119 of 2020** dated **29.02.2020** under Sections **4/6/10** of the POCSO Act.

- A n d -

In the matter of : Soumen Das

.... Petitioner.

Mr. Angshuman Chakraborty,
Mr. S. S. Saha,

... For the Petitioner.

Mr. Adil Badr,
Mr. S. B. Roychowdhury,

... For the State.

Order dictated by Arijit Banerjee, J.:

1. Status report filed by the State be kept with the records.
2. In spite of service none appears for the defacto complainant/victim.
3. Learned Advocate for the State says that initially because of the covid pandemic, the trial could not proceed. Thereafter, learned Trial Court was lying vacant for a long time. Appointment was made in the trial Court in November 2024. Only thereafter, things have started moving.
4. We may accept that it is not the fault of the prosecution that witness action has not begun. Even then, we do not find that the petitioner is to be blamed for the inordinate delay in the progress of trial. The petitioner is in custody for more than four years ten months. Not even one out of 14 charge sheet named witnesses has been examined.
5. We have often said that however grave the charge is, however strong the prosecution case is, that would not justify indefinite incarceration of an under-trial person. Nobody stands in

the way of the prosecution securing the petitioner's conviction. However, we are unable to countenance a situation where an under-trial is in judicial custody for close to five years and witness action has not even begun.

6. Hence, without touching the merits of the case and solely on the touchstone of Article 21 of the Constitution of India, we feel constrained to enlarge the petitioner on bail.

7. Accordingly, we direct that the petitioner, namely, **Soumen Das**, shall be released on bail upon furnishing a bond of Rs. 10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Judge, Special Court (under POCSO Act), Barrackpore, North 24 Parganas subject to condition that he shall appear before the trial court on every date of hearing and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever and on further condition that the petitioner while on bail shall not enter with the jurisdiction of the Naihati Police Station and shall meet the Officer-in-Charge of the concerned police station where he will reside once in a fortnight until further orders.

8. In the event the petitioner fails to adhere to any of the conditions stipulated above without justifiable cause, the trial court shall be at liberty to cancel the petitioner's bail in accordance with law without further reference to this court.

9. The application for bail is, accordingly, allowed.

10. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

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

(**Arijit Banerjee, J.)**