

21.02.2025

DL-38

Court No.26

CRM (DB) 4368 of 2024

*(Bail **Rejected**)*
(AD)

In re : An Application for Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 439 of the Code of Criminal Procedure, 1973 in connection with Special Sessions Trial Case No.14(11) of 2022 (Special Case No.181 of 2020) pending before the Learned Judge, Special Court cum the Learned Additional Sessions Judge, 2nd Court, Alipore, South 24 Parganas arising out of **Canning** Police Station Case No.**551** of **2020** dated **13.09.2020** under Sections **363/302/376D/120B** of the Indian Penal Code, 1860 read with Section **6** of the Protection of Children from Sexual Offences Act.

-And-

In the matter of : Shamim Gayen @ Samim Gayen @ Gain
... ...Petitioner

Mr. Soumya Nag, Advocate

Ms. Namrata Chatterjee, Advocate

... ... For the Petitioner

Mr. Bibaswan Bhattacharya, Advocate

Mr. Bikram Mitra, Advocate

... ...For the State

1. Petitioner prays for bail.
2. Learned Advocate appearing for petitioner submits that, the prayer for bail is founded on two grounds, namely, one under Article 21 of the Constitution of India and the other on merits.
3. So far as Article 21 is concerned, learned Advocate appearing for the petitioner submits that, although, the Coordinate

Bench in CRM (DB) 1510 of 2024 rejected the prayer for bail for an accused on November 8, 2024, the Hon'ble Supreme Court granted bail to such accused in Criminal Appeal No.43 of 2025. He refers to the two judgments in those two matters. He also relies upon ***Criminal Appeal No.738 of 2025 (Tapas Kumar Palit vs. State of Chhattisgarh)***.

4. Learned Advocate appearing for the petitioner submits that, out of 14 prosecution witnesses, only 9 were examined. He draws the attention of the Court to the deposition of such prosecution witnesses. According to him, none of the prosecution witnesses identified the petitioner. The case of the prosecution is one of circumstantial evidence with no circumstance being established as against the petitioner. On such score, therefore, he also submits that the petitioner should be enlarged on bail.
5. Learned Advocate appearing for the State draws the attention of the Court to the deposition of prosecution witness no.9 (P.W. 9). He submits that, P.W. 9 identified the petitioner as the person with whom such P.W.9 saw the victim along with the other co-accuseds. The victim was subsequently found dead and after being gang raped. He submits that, the nails from the body of the victim were found to be plucked out.
6. In ***Sk. Md. Anisur Rahaman*** (*supra*), Hon'ble Supreme Court considered a case where the undertrial was in custody for five years two months and despite subsistence of an order of March 17, 2023 passed by the Hon'ble Supreme Court expecting the trial to be concluded within six months of such

order, only 75 witnesses out of 114 were examined at the trial. In such circumstances, Hon'ble Supreme Court found it prudent to grant bail to such undertrial under Article 21 of the Constitution of India.

7. In ***Tapas Kumar Palit*** (*supra*), the undertrial was in custody in excess of five years. Again, possibility of the trial ending any time soon was not found in that case also.
8. In the present case, the petitioner is in custody slightly in excess of four years five months. There does not subsist any order passed by any Court requiring the trial to be concluded within a particular period of time. Out of 14 prosecution witnesses, 9 stands examined at the trial.
9. At this stage, it is submitted on behalf of the State that, the prosecution will examine only three more witnesses.
10. Possibility of the trial ending soon exists.
11. Prosecution witness no.9 identified the petitioner at the trial as one of the persons with whom he saw the victim. P.W.9, however, did not state the name of the petitioner correctly.
12. As noted above, three more prosecution witnesses remain to be examined. Petitioner was identified as one of the persons involved in the crime, at the trial. The crime for which the petitioner stands trial is heinous in nature with gang rape, mutilation of the body and murder.
13. In such circumstances, we do not find that the petitioner is entitled to be bail either on merits or on the principle of Article 21 of the Constitution of India.
14. Accordingly, the prayer for bail of the petitioner is **rejected**.

15. **CRM (DB) 4368 of 2024** is **dismissed**.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)