

15. 04.04.2025
Court
No.4 (Tanmoy)

Interim
Bail

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CRM (DB) 111 of 2025

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973 / Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, arising out of **NJP** Police Station Case No.**111/2023** dated **12.02.2023** under Section **498A/302** of the Indian Penal Code, 1860.

And

In the matter of: - **Sudip Baisya @ Sudip Baishya** ...petitioner.

Mr. Bibek Tarafder
Ms. Rishita Chakraborty ...for the petitioner.

Mr. Aditi Shankar Chakraborty, APP
Mr. Subhasish Misra ...for the State.

1. Learned Advocate for the petitioner and learned Advocate for the opposite party/State of West Bengal are present.
2. Heard learned Counsel for the parties. Perused the materials in the case diary.
3. Learned Advocate for the petitioner submits that his client is in custody for more than two years and till date only one witness has been examined who is declared hostile by the prosecution. Learned Advocate further submits that the accused persons used to reside separately and is not involved in this case and the petitioner/accused person took the victim to the hospital.

4. Learned Advocate appearing for the opposite party/State of West Bengal, submits that the offence is serious and the statements of witnesses and the recovery of weapons will go to show the petitioner's involvement in the offence.
5. Upon perusal of the materials in the case diary specifically the statement of one of the witnesses recorded under Section 164 and Section 161 of the Criminal Procedure Code, 1973 (Sections 183/181 of Bharatiya Nagarik Suraksha Sanhita, 2023) it appears that in the Statement recorded under Section 164 Cr.PC, the said witness did not mention the name of the husband of the victim and there is mention of some people getting down from toto, although she stated that the husband assaulted the victim. But in her Statement recorded under Section 161 Cr.PC, the witness mentioned the name of the husband and the acts committed by him. In the FIR there are general allegations against all accused persons. Thus, there are some contradictions in the statement of the eyewitness recorded under Section 164 and Section 161 of the Criminal Procedure Code, 1973, which is to be decided at the time of trial and it would not be reasonable for making any further observation with regard to the merits of the case. It is further submitted by learned Advocate for the petitioner that one witness has turned hostile and the eyewitness, whose statement was recorded under Section 164 and Section 161 of the Criminal Procedure Code, 1973, has not turned up till date in spite of issuance of summons. Now it is

only to be decided as to whether the petitioner should be granted bail on the ground that the other co-accused persons are out on bail and the period of detention undergone by the petitioner is more than two years and it is submitted by learned Advocate for the State that the petitioner does not stand on the same footing as that of the other accused persons and there is specific allegations against the petitioner. Although in the FIR there were general allegations against all the accused persons, in order to decide the prayer for bail it is necessary to consider the judicial pronouncements as made by the Hon'ble Supreme Court and different High Courts. It has been observed in different judicial pronouncements that in order to be released on bail the Court should consider the nature and the seriousness of the offence, the evidence available on record, the apprehension of abscondence and tampering evidence and the severity of the punishment, if the accused is convicted. As there is delay in trial it is also necessary to consider the judicial decision on this issue. In the case of **Arvind Kejriwal v. Central Bureau of Investigation** reported in **2024 SCC OnLine SC 2550**. The Hon'ble Supreme Court observed as follows:

“The evolution of bail jurisprudence in India underscores that the ‘issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process’. The principle has further been expanded to establish that the prolonged incarceration of an accused person, pending trial,

amounts to an unjust deprivation of personal liberty. This Court in Union of India v. K.A. Najeer has expanded this principle even in a case under the provisions of the unlawful Activities (Prevention) Act, 1967 (hereinafter 'UAPA') notwithstanding the statutory embargo contained in Section 43-D(5) of the Act, laying down that the legislative police against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time. The courts would invariably bend towards 'liberty' with a flexible approach towards an undertrial, save and except when the release of such person is likely to shatter societal aspirations, derail the trial or deface the very criminal justice system which is integral to rule of law."

In the case of Mohd Tahir Hussain v. State of NCT of Delhi reported in 2025 SCC OnLine SC 135 the Hon'ble Supreme Court observed as follows:-

I have examined the allegations and the evidence against the Petitioner. No doubt, they are grave and reprehensible but as of this moment they are exactly that – allegations. It is settled law that magnitude and gravity of the offence alleged are not grounds, in and by themselves, to deny bail [Para 18 12 of K A Najeer (supra) and Jalaluddin Khan v. Union of India, (2024) 10 SCC 574], more so when trial is prolonged. The Petitioner's rights under Article 14 and 21 of the Constitution of India cannot be lost sight of. As on date, no court of law has convicted the petitioner. The following passage from Javed Gulam Nabi Shaikh (Supra) is attracted squarely:

We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."

6. Upon perusal of the materials in the case diary and the allegations made against the petitioner it is clear that the allegations are very serious in nature although it is to be decided at the time of trial and it is not reasonable to grant regular bail. However, it is also necessary to decide as to whether the petitioner should be granted *interim* bail for a short period, as it is not reasonable to grant regular bail.

7. In the case of **Manoranjan Mondal v. State** reported in **2024(3) CHN P-425** it was observed as follows:

“In this matter the petitioner is in custody for 2 years 10 months. As in this case examination of all the witnesses are over, this case cannot be equated with other cases. Now the point for consideration is whether it is unreasonable on the part of the petitioner who is about 23 years of age and is in custody for about 2 years 10 months to pray for bail at this stage.

The answer is obviously no. An under-trial who is presumed to be innocent till proved guilty may reasonably expect that his right to personal liberty be kept intact during trial and he be permitted to stand trial by imposing some restriction of his right instead of detention. A person in custodial detention specially when of young age suffers mental agony, and trauma which may be avoided during pre-trial stage, unless it is a very exceptional case and release of the accused will be a threat to public safety and prejudicial to trial. A person being incarcerated for a long time during stage of trial loses his contact with his family members and relation which has every possibility to create stress and depression and is not desirable during pre-trial detention. In the event it is not possible to enlarge the accused on confirmed bail the accused may be granted interim bail for a short period few times so that he may meet his family members and relations and exercise his right guaranteed under the Constitution for a short period during his trial when he is presumed to be innocent. When there is a provision of release on parole for a short period of a convict undergoing sentence of imprisonment there may not be any sufficient reason as to why an under-trial cannot be granted interim bail for a short period. Thus even if there is possibility to conclude trial within a short period an under-trial may be granted interim bail if there is difficulty to grant regular bail during trial unless there are very serious exceptional circumstances. All persons have some obligations towards the society and some basic rights. When the said person is implicated in a criminal case he has to face trial. During trial he may be kept in custody or he may be on bail with condition to appear on all dates fixed. In the event it is thought fit to keep a person in custody till conclusion of trial he should be granted interim bail to meet his family. All persons have basic rights to be with their family and in case of trial in custody for some short interim period. A person has some

obligations to see the welfare of his family as family is also a part of the society, so scope should be given to discharge the said obligation. When such scope is available to convicts undergoing imprisonment to meet family there is no reason why the same should not be granted to under-trial prisoners who are presumed to be innocent till proved guilty unless it is a very exceptional case.”

8. In the facts and circumstances of the case this Court is of the view that in the interest of justice, as there is delay in trial, the petitioner should be granted *interim* bail for a period of eight weeks.
9. Accordingly, it is ORDERED that the petitioner, namely, **Sudip Baisya @ Sudip Baishya**, shall be released on *interim* bail, upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of Rs.5,000/- (Rupees Five Thousand) each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Jalpaiguri, subject to condition that the petitioner 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 petitioner, while on *interim* bail, shall not leave the jurisdiction of the Trial Court and shall furnish his present address to the Inspector-in-Charge/Officer-in-Charge of NJP Police Station and shall meet the Inspector-in-

Charge/Officer-in-Charge of the concerned Police Station, within whose jurisdiction he shall be presently residing, twice a week, until further orders.

10. The petitioner shall not contact the persons acquainted with the facts of the case and shall not enter the locality where the offence took place.
11. Pursuant to completion of eight weeks, the petitioner shall surrender before the learned Trial Court. In the event the Trial Court considers and thinks fit that the trial cannot be completed within a short period, it may extend the *interim* bail or pass necessary orders, without being influenced by the observations made in this order. The learned Trial Court is also requested to proceed with the trial as expeditiously as possible without giving unnecessary adjournment to either of the parties.
12. In the event the petitioner fails to adhere to any of the conditions stipulated above without any justifiable cause, his *interim* bail shall stand automatically cancelled without further reference to this Court.
13. The application for bail being CRM (DB) 111 of 2025 is accordingly disposed of.
14. Criminal Section is directed to supply urgent photostat certified copies of this order to the parties, if applied for, upon compliance with all requisite formalities.

(Biswaroop Chowdhury, J.)