

10.04.2025
Court No. 4
(A.Bhar)
(Allowed)

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

CRM (DB) 186 of 2025

In Re: An Application for bail under Section 483 of the
Bhartiya Nagarik Suraksha Sanhita/Section 439 of the
Code of Criminal Procedure.

And

**In the matter of: Laxmi Mochhary @ Laxmi Mochhari @ Buchi
.....Petitioner.**

Mr. Subham Ghosh,

Mr. Mayank Roy

.....For the petitioner

Mr. Aditi Shankar Chakraborty, Learned APP,

Mr. Subhasish MishraFor the State

This is an application under Section 439 of the Code of Criminal Procedure read with Section 483 of BNSS filed by the petitioner who is in custody in connection with Birpara Police Station Case No. 116 of 2023 dated 24-08-2023 under Sections 363/364/365/302/201/120B of the Indian Penal Code.

It is the contention of the petitioner that she was arrested on 29-08-2023 and is in custody till today. It is further contended that from the statement of Prosecution witnesses complicity of the petitioner cannot be established. It is also contended that there are no essential ingredients on record to establish the commission of alleged offence by the petitioner.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party State of West Bengal. Perused the materials in the case diary. Learned Advocate for the petitioner submits that his client is falsely implicated in the case on the

ground that some blood stained articles are recorded from her house. It is further submitted that the statement of P.W-4 in his chief on 15/03/2024 will go to show that the petitioner is not involved and there is no specific overt act.

Learned Advocate for the opposite party objects the grant of bail and submits that the place of quarrel was at the house of the petitioner.

Upon perusing the materials in case diary and the deposition of P.W-4 although it will not be proper to make observation with regard to merits of the case but it is to be decided as to whether petitioner should be granted bail considering period of detention to be 1 year 7 months and that 6 witnesses are yet to be examined.

3. In the case of Arvind Kejriwal VS Central Bureau of Investigation reported in 2024 SCC Online SC 2550 the Hon'ble Supreme Court observed as follows:

"38. 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 sensitised 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. Najeeb 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 that Act, laying down that the legislative policy 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."

4. In the case of Mohd Tahir Hussain VS State of NCT of Delhi reported in 2025 SCC Online SC 135 the Hon'ble Supreme Court observed as follows:- "27. 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 37 offence alleged are not grounds, in and by themselves, to deny bail [Para 18 12 of K ANajeeb (supra) and Jalaluddin Khan v Union of India, (2024) 10 SCC 574], moreso when trial is prolonged. The Petitioner's rights under 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:

'18. 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.'"

Upon considering the materials in the case diary and deposition of P.W.4 and the period of detention this Court is of the view that considering the nature of allegation against the petitioner

petitioner and the petitioner being a female accused and there being no reasonable apprehension to abscond the petitioner should be granted bail. Thus I allow the prayer for bail made by the petitioner.

Hence the petitioner be released on bail with 2 sureties of Rs. 10,000/- each one of which must be local subject to the satisfaction of Learned Trial Court. The Petitioner upon being released shall not leave the jurisdiction of the Court, and shall not meet the witnesses and shall give the mobile number she is using to Police Station and shall attend Court on all dates fixed.

In the event there is violation of any condition Learned Trial Court will be empowered to cancel bail without any reference to this Court.

(Biswaroop Chowdhury, J.)