

31. 03.04.2025
Court
No.4 (Tanmoy)

Interim
Bail

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

CRM (DB) 187 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.**583/2024** dated **15.6.2024** under Section **302/120B/379/323/324/325/307/34** of the Indian Penal Code, 1860.

And

In the matter of: - **Utsab Roy** ...petitioner.

Mr. Subrata Karmakar
Ms. Madhumita Sarkar
Ms. Rinka Chakraborty ...for the petitioner.

Mr. Aditi Shankar Chakraborty, APP
Mr. Aniruddha Biswas ...for the State.

Mr. Sandip Guha Roy
Mr. Biswajit Das
Mr. Ananda Paul ...for the *de facto* complainant.

1. Learned Advocate for the petitioner, learned Advocate for the opposite party/State of West Bengal and learned Advocate for the *de facto* complainant 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 284 days and is suffering from ailments including HIV AIDS. He draws attention of this Court to the

order dated February 28, 2025, passed by the learned Trial Court with regard to ailment of the petitioner. Learned Advocate further submits that some co-accused persons are out on bail and in the instant case, the CCTV footage was not seized by the Investigating Authority which shows the defect in the investigation.

4. Learned Advocate appearing for the opposite party/State of West Bengal, submits that there are several allegations against the petitioner and the statements of witnesses recorded under Sections 164/161 of the Criminal Procedure Code, 1973 (Sections 183/181 of Bharatiya Nagarik Suraksha Sanhita, 2023) and the FIR will go to show the involvement of the accused persons including the petitioner. Learned Advocate draws attention to the statements of witnesses recorded under Section 164 of the Criminal Procedure Code, 1973.
5. Learned Advocate appearing for the *de facto* complainant submits that there are several allegations against the petitioner and other criminal cases are also instituted against him and if the petitioner is enlarged on bail, the peace in the locality will be disrupted.
6. Upon perusal of the materials in the case diary and upon hearing learned Counsel for the parties and considering the nature of the offence, although it would not be proper to make any observation with regard to the merits of the case,

but it is necessary to decide as to whether the petitioner should be released on bail.

7. It has been decided by the Hon'ble Supreme Court and different High Courts 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 evidences appearing, the severity of the punishment, if convicted, chance of the accused repeating offences or absconding. In the instant case, the offence alleged is undoubtedly very serious in nature and there are materials in the case diary showing involvement of the petitioner. However, it is observed by the learned Trial Court that the petitioner was admitted at NBMCH and suffering from AIDS but there is no report that the accused petitioner is not getting proper treatment. Learned Advocate for the opposite party/State submits that necessary steps will be taken for providing best available medical treatment to the petitioner/accused person.
8. I have given consideration to the rival submissions of the parties. However, it is also necessary to decide as to whether the petitioner should be granted *interim* bail for the purpose of treatment. 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.”

9. It has also been held in different judicial pronouncements that *interim* bail cannot be co-related with regular bail as it relates to exceptional consideration and based on compassion, humanity and sympathy.
10. In the instant case, considering the report of the petitioner being admitted to NBMCH and the nature of ailments and considering the fact that although personal liberty of a person as enshrined in Article 21 of the Constitution of India can be curtailed in necessary cases but if necessary, the liberty which was curtailed can be relaxed for some period in exceptional circumstances specially in case of medical exigency and treatment which is also a part of the right to life. *Interim* bail can thus be granted for treatment due to ailments.
11. Upon considering the observation of the learned Trial Court with regard to the medical ailment and considering different judicial decisions this Court is of the view that on ground of sympathy the petitioner should be granted *interim* bail for a period of four weeks.
12. Accordingly, it is ORDERED that the petitioner, namely, **Utsab Roy**, 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 furnish his present address to the Inspector-in-Charge/Officer-in-Charge of NJP Police Station as well as the learned Trial Court and shall meet the Inspector-in-Charge/Officer-in-Charge of the concerned Police Station, within whose jurisdiction he shall be presently residing, once every week, until further orders.

13. In the event the petitioner leaves the district for treatment, he shall not contact the persons acquainted with the facts of the case and shall furnish his mobile number and the place of his location and the place of treatment before the Inspector-in-Charge/Officer-in-Charge of the concerned Police Station as also to the learned Trial Court.
14. Pursuant to completion of four weeks, the petitioner shall surrender before the learned Trial Court and thereafter, in the event the Trial Court is of the view that further extension of the *interim* bail is necessary the same may be extended. 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.
15. 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.

16. The application for bail being CRM (DB) 187 of 2025 is accordingly disposed of.

17. 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.)