

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

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

CRM (M) 1 of 2025

In Re: An Application for Bail under Section 439 of the Code of Criminal Procedure as amended under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

And
In the matter of: Adil Alam

.....Petitioner.

Mr. Sourav Chatterjee, Sr. Adv.,
Mr. Ibrar Alam,
Mr. Debanjan Das

.....For the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Kallol Nag,

.....for the State

This is an application under Section 439 of the Code of Criminal Procedure corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 filed by the petitioner who is in custody in connection with Kurseong Police Station case No-41/2024 dated 06.04.2024 under Section 302/201 of the Indian Penal Code 1860 added Section being 364/376/511 of the Indian Penal Code 1860.

It is the contention of the petitioner that the case against him is based on circumstantial evidence, and there is no direct evidence to implicate him in the commission of the alleged offence. It is further contended that the prosecution has not been able to establish any concrete link between the petitioner and the alleged crime and the chain of circumstantial evidence is incomplete. It is also contended that the case against the petitioner largely relies on the testimony of a co-accused who is the principal accused and has allegedly named the petitioner. The statement of the co-accused is

not conclusive and may be unreliable, as it could be motivated by personal interests such as an attempt to reduce their own sentence or implicate others. It is contended that the petitioner has no previous criminal antecedents and is a person of good character and has deep roots in society and is unlikely to abscond or influence witnesses if granted bail.

Heard Learned Advocate for the petitioner and Learned Advocate for the state. Perused the materials in the case diary.

Learned Advocate for the petitioner submits that his client is falsely implicated in the case and is in custody for 11 months. Learned Advocate further submits that his client is implicated on the statement of co-accused persons, and on the materials collected till today further detention of the petitioner is not justified. Learned Advocate also submits that recovery of articles is made from public place and not from residence of petitioner and in public place any person can have access. Learned Advocate relies upon a decision of the Hon'ble Supreme Court in the case of Alope Nath Dutta and others VS State of West Bengal reported in (2007) 12 SCC P-230.

Learned Advocate for the opposite party State objects the grant of bail. Learned Advocate further draws attention to materials in the case diary and submits that on the statement of the petitioner certain articles were recovered which shows his involvement. Learned Advocate submits that grant of bail to the petitioner would vitiate the trial.

Upon perusal of the case diary it appears, that the father of the victim girl lodged missing diary on 29/03/2024 before I.C. Islampur Police Station making allegations against co-accused, Md.

Nawab. Again by letter dated 12/04/2024 addressed to the Inspector in Charge Kurseong Police Station Md. Zishan Ali brother of the victim informed that Md. Nawab Kidnapped his sister. It was prayed to hand over the body of his sister and take action against Md. Nawab.

The statement of another witness Ayab Alam also mentions that he saw the victim girl boarding a white vehicle driven by co-accused Nabab. He did not see any other person in the said vehicle.

It further appears from the record that the petitioner was arrested from his residence and not from any other place and there is no allegation that he was absconding. It appears from the case diary that out of 34 witnesses mentioned in the charge sheet the Investigating Officer has cited two witnesses from victims family namely father of the victim Md. Sahawuddin, and brother of the victim Zishan Alam. Moreover the Investigating Authority simply relied on the missing diary lodged by Md. Sahabuddin on 29-03-2024 making allegations against Md. Nawab and to proceed against him in accordance with Law, and letter addressed by Md. Zisha Alam to Inspector in charge Kurseong P.S. with a prayer to hand over the body of the victim and to take action against Md. Nawab for Kidnapping and murdering his sister. These letters do not mention the name of the petitioner. The Investigating Officer has not recorded the statement of the father of the victim or the brother of the victim who is cited as witness either under Section 164 CrPC or under Section 161 CrPC to ascertain the relationship if any of the petitioner with co-accused Md. Nawab who is mentioned in the missing diary by the father the victim and to know the nature of

relations with the petitioner and victim or her family. Moreover, no near relations of the victim is examined in this regard to know about the nature of relation with the petitioner and victim's family.

Upon considering the materials in the case diary although the involvement of the petitioner cannot be ruled out at this stage but considering the fact that the petitioner is in custody for about 11 months and the case involves examination of 34 witnesses, and there is likelihood of delay in trial as trial has not commenced it is to be decided whether it would be reasonable to release the petitioner on bail.

In this regard it is necessary to quote some observations of the Hon'ble Supreme Court in the case of Mohd. Tahir Hussain V State of NCT of Delhi reported in 2025 SCC online S.C. 135.

4. In the case of Mohd Tahir Hussain VS State of NCT of Delhi 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.”

In the facts and circumstances this Court is of the view that although there are allegations against the petitioner but considering the nature of evidence collected against the petitioner, period of detention already undergone by the petitioner, the case involving examination of 34 witnesses and likelihood of delay in trial, as there is no reasonable apprehension to abscond the petitioner should be released on bail.

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 the trial Court. The petitioner upon being released shall meet officer in charge of the concerned police station once in a week, shall not leave the jurisdiction of the Court and shall not contact the witnesses and furnish mobile number at Police Station which he is using and shall attends Court on all dates fixed.

In the event of default the Learned Trial Court will be empowered to cancel the bail.

It is hereby clarified that the above observation are only for the purpose of bail application and not on merits of trial.

(Biswaroop Chowdhury, J.)