

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.M. (M) 1894 of 2025

Biplab Chhetri @ Biplab Chettri

-versus-

The State of West Bengal

For the Petitioner	: Mr. Himangsu De, Sr. Adv., Mr. Subhrajit De, Adv., Mr. Oishik Chatterjee, Adv.
For the State	: Mr. Saibal Bapuli, Ld. A.P.P., Ms. Z.N. Khan, Adv., Mr. Dipankar Paramanick, Adv.
For the de-facto complainant	: Mr. Sourav Chatterjee, Sr. Adv., Mr. Soumya Nag, Adv., Ms. Namrata Chatterjee, Adv.

Reserved On : **03.12.2025**

Judgement On : **22.01.2026**

Tirthankar Ghosh, J.:-

Learned Advocate appearing for the petitioner has prayed for bail in connection with Raiganj Police Station Case No. 14/2013 dated 05.01.2013.

The background of the case relates to a written complaint addressed to the Officer-in-Charge of Raiganj Police Station by Sarbari Bardhan, wife of the deceased, Sanjib Bardhan, wherein it was complained that the deceased was an established businessman of Raiganj and was one of the owners of an established Cable Network business, namely RCTV (Raiganj Cable TV Pvt.

Ltd.). It was alleged that on 04.01.2013 at about 8:20 P.M. Sanjib Bardhan (deceased), left the office along with one of his employees, namely Sanjit Pandey @ Chottu and his driver Swapandeb Sharma in his own car for returning home. When the car reached Nishith Sarani, suddenly a white-coloured ambassador came in front of the car and blocked their way. As soon as the car stopped, some miscreants rushed towards the car of the deceased, broke open the windows of the car and started firing indiscriminately from their fire arms. Several bullets hit the body of the deceased, as a result of which he succumbed. It was further alleged that the miscreants were led by the petitioner, accompanied by Kaushik Pal @ Babai and two others. There were other miscreants whose faces were covered and at the time of firing, the petitioner abused and threatened each and everybody who were with the deceased. After the incident, the deceased was being taken to North Bengal Medical College, when on the way he succumbed to his injuries. The complainant states that she received information about the incident from Chottu, the employee of the deceased and the driver. Both the employees were eyewitnesses to the incident, who narrated her whole of the incident and they also represented that they would be able to identify the accused persons if they saw their uncovered faces as they had seen the accused persons at the time of the incident under street light.

Mr. Himangsu De, Learned Senior Advocate appearing on behalf of the petitioner, submitted that petitioner was arrested on 28.02.2013 in connection with the instant case and since then he is in custody. Two of the accused persons have been granted bail and the petitioner emphasized that

he should be released on bail on the grounds of delay in whole process of the criminal trial, as he is in custody for about twelve years and ten months. It was further stated that Article 21 of the Constitution of India provides right to speedy trial and in the present case the manner in which delay has taken place and other accused persons having been granted bail on the grounds of delay, petitioner is entitled to get benefit of the same. In order to fortify his argument, Learned Senior Advocate relied upon number of judgments, which are dealt with herein below.

Learned Senior Advocate submits that way back in 1979 the Hon'ble Supreme Court in *Hussainara Khatoon & Ors. (iv) v. Home Secretary, State of Bihar, Patna*, reported in (1980) 1 SCC 98, has in clear and unequivocal terms referred to the cherished principle of reasonable, fair, and just procedure, which has been granted under Article 21 of the Constitution, and the obligation of the State to provide speedy justice. To that effect, Learned Advocate relied upon paragraph 10 of the said judgment which reads as follows:

“10. We find from the counter-affidavit filed on behalf of the respondents that no reasons have been given by the State Government as to why there has been such enormous delay in bringing the undertrial prisoners to trial. Speedy trial is, as held by us in our earlier judgment dated February 26, 1979, an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for

improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, as pointed out by the Court in Rhem v. Malcolm [377 F Supp 995] : “The law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty”. It is also interesting to notice what Justice, then Judge, Blackmun said in Jackson v. Bishop [404 F Supp 2d 571] :

“Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations.”

So also in Holt v. Sarver [309 F Supp 362] affirmed in 442 F Supp 362, the Court, dealing with the obligation of the State to maintain a Penitentiary System which did not violate the Eighth Amendment aptly and eloquently said:

“Let there be no mistake in the matter; the obligation of the respondents to eliminate existing unconstitutionality does not depend upon what the legislature may do, or upon what the Governor may do, or, indeed upon what respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States.”

The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting

up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional Judges and other measures calculated to ensure speedy trial. We find that in fact courts in the United States have adopted this dynamic and constructive role so far as the prison reform is concerned by utilising the activist magnitude of the Eighth Amendment. The courts have ordered substantial improvements to be made in a variety of archaic prisons and jails through decisions such as Holt v. Sarver [309 F Supp 362] , Jones v. Wittenberg [330 F Supp 707] , Newman v. Alabama [349 F Supp 278] and Gates v. Collier [349 F Supp 881] . The Court in the last-mentioned case asserted that it “has the duty of fashioning a decree that will require defendants to eliminate the conditions and practices at Parchman hereinabove found to be violative of the United States's constitution” and in discharge of this duty gave various directions for improvement of the conditions of those confined in the State Penitentiary. The powers of this Court in protection of the constitutional rights are of the widest amplitude and we do not see why this Court should not adopt a similar activist approach and issue to the State directions which may involve taking of positive action with a view to securing enforcement of the fundamental right to speedy trial. But in order to enable the Court to discharge this constitutional obligation, it is necessary that the Court should have the requisite information bearing on the problem. We, therefore, direct the State of Bihar to furnish to us within three weeks from today particulars as to the location of the Courts of Magistrates and Courts of Sessions in the State of Bihar together with the total number of cases pending in each of these courts as on December 31, 1978 giving yearwise break-up of such pending cases and also explaining why it has not been possible to dispose of such of those cases as have been pending for more than six months. We would appreciate if the High Court of Patna also furnishes the above particulars to us within three weeks from today since the High Court on its administrative

side must be having records from which these particulars can be easily gathered. We also direct the State of Bihar to furnish to us within three weeks from today particulars as to the number of cases where first information reports have been lodged and the cases are pending investigation by the police in each sub-division of the State as on December 31, 1978 and where such cases have been pending investigation for more than six months, the State of Bihar will furnish broadly the reasons why there has been such delay in the investigative process. The writ petition will now come up for hearing and final disposal on April 4, 1979. We have already issued notice to the Supreme Court Bar Association to appear and make its submissions on the issues arising in the writ petition since they are of great importance. We hope and trust that the Supreme Court Bar Association will respond to the notice and appear to assist the Court at the hearing of the writ petition.”

Reference was also made on behalf of the petitioner in respect of the judgment of the Hon’ble Supreme Court in *Satender kumar Antil v. C.B.I. & Anr.*, reported in (2022) 10 SCC 51. Emphasis was made on paragraphs 53 and 64 which reads as follows:

“53. *Surinder Singh v. State of Punjab [Surinder Singh v. State of Punjab, (2005) 7 SCC 387 : 2005 SCC (Cri) 1674] : (SCC pp. 390-92, paras 8-10)*

“8. It is no doubt true that this Court has repeatedly emphasised the fact that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution. The aforesaid article confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. If a person is deprived of his liberty under a procedure which is not

*reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution. It has also been emphasised by this Court that the procedure so prescribed must ensure a speedy trial for determination of the guilt of such person. It is conceded that some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. These are observations made in several decisions of this Court dealing with the subject of speedy trial. In this case, we are concerned with the case where a person has been found guilty of an offence punishable under Section 302IPC and who has been sentenced to imprisonment for life. The Code of Criminal Procedure affords a right of appeal to such a convict. The difficulty arises when the appeal preferred by such a convict cannot be disposed of within a reasonable time. In *Kashmira Singh v. State of Punjab* [*Kashmira Singh v. State of Punjab*, (1977) 4 SCC 291 : 1977 SCC (Cri) 559] this Court dealt with such a case. It is observed : (SCC pp. 292-93, para 2)*

‘2. ... The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail

for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence.'

9. *Similar observations are found in some of the other decisions of this Court which have been brought to our notice. But, however, it is significant to note that all these decisions only lay down broad guidelines which the courts must bear in mind while dealing with an application for grant of bail to an*

appellant before the court. None of the decisions lay down any invariable rule for grant of bail on completion of a specified period of detention in custody. Indeed in a discretionary matter, like grant or refusal of bail, it would be impossible to lay down any invariable rule or evolve a straitjacket formula. The court must exercise its discretion having regard to all the relevant facts and circumstances. What the relevant facts and circumstances are, which the court must keep in mind, has been laid down over the years by the courts in this country in a large number of decisions which are well known. It is, therefore, futile to attempt to lay down any invariable rule or formula in such matters.

10. The counsel for the parties submitted before us that though it has been so understood by the courts in Punjab, the decision of the Punjab and Haryana High Court in Dharam Pal case [Dharam Pal v. State of Haryana, 1999 SCC OnLine P&H 925 : (2000) 1 Chan LR 74] only lays down guidelines and not any invariable rule. Unfortunately, the decision has been misunderstood by the Court in view of the manner in which the principles have been couched in the aforesaid judgment. After considering the various decisions of this Court and the difficulties faced by the courts, the High Court in Dharam Pal case [Dharam Pal v. State of Haryana, 1999 SCC OnLine P&H 925 : (2000) 1 Chan LR 74] observed : (SCC OnLine P&H para 18)

‘18. ... We, therefore, direct that life convicts, who have undergone at least five years of imprisonment of which at least three years should be after conviction, should be released on bail pending the hearing of their appeals should they make an application for this purpose. We are also of the opinion that the same principles ought to apply to those

convicted by the courts martial and such prisoners should also be entitled to release after seeking a suspension of their sentences. We further direct that the period of five years would be reduced to four for females and minors, with at least two years imprisonment after conviction. We, however, clarify that these directions shall not be applicable in cases where the very grant of bail is forbidden by law.”

64. *Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offence, he shall be released by the court on his personal bond with or without sureties. The word “shall” clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the Public Prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that “bail is the rule and jail is an exception” coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This Court in *Bhim Singh v. Union of India* [*Bhim Singh v. Union of India*, (2015) 13 SCC 605 : (2016) 1 SCC (Cri) 663] , while dealing with the aforesaid provision, has directed that : (SCC pp. 606-07, paras 5-6)*

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.”

Learned Senior Advocate appearing for the petitioner has also relied upon a recent judgment of the Hon'ble Supreme Court in *Tapas Kumar Palit v. State of Chattisgarh*, reported in (2025) SCC Online SC 322, and emphasized on paragraphs 10, 14 and 15 of the said judgment, which are quoted below:

“10. *However, many times we have made ourselves very clear that howsoever serious a crime may be the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution.*

14. *In this regard, the role of the Special Judge (NIA) would also assume importance. The Special Judge should inquire with the Special Public Prosecutor why he intends to examine a particular witness if such witness is going to depose the very same thing that any other witness might have deposed earlier. We may sound as if laying some guidelines, but time has come to consider this issue of delay and bail in its true and proper perspective. If an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed. The stress of long trials on accused persons - who remain innocent until proven guilty - can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job or accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.*

15. *We would say that delays are bad for the accused and extremely bad for the victims, for Indian society and for the*

credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.”

Additionally, reference has also been made to the judgment of this Hon'ble Court in *Akhil Chandra Ghosh @ Akhil Ghosh @ Anil Ghosh @ Ajoyda v. State of West Bengal* in C.R.M. No. 8869 of 2020, and attention of the Court has been drawn to the following observations:

“From the sequence of facts, it appears that the petitioner cannot be held responsible for the delay which has occasioned. The petitioner is languishing in custody since 4th December, 2010 and there is no possibility of conclusion of the trial in the near future.

In several cases, the Hon'ble Supreme Court has granted bail owing to the long period of incarceration and the unlikelihood of the trial being completed any time in the near future. The exposition of Article 21 in the case of Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna, reported in (1980) 1 SCC 81 was exhaustively considered afresh in the case of Abdul Rehman Antulay and Ors. Vs. R.S.Nayak and Anr., reported in (1992) 1 SCC 225 and it was inter alia observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice.

Applying such proposition of law to the facts of the present case, we are of the opinion that further detention of the petitioner, who is in custody since 4th December, 2010, is not warranted.”

Learned Senior Advocate also relied upon on the judgment of *Mantu Mahato & Ors. V. State of West Bengal* reported in 2023 1 CHN 29, wherein

reference was made to paragraphs 12 and 13 for emphasizing the right of the accused under Article 21 of the Constitution and not adhering to the same results in violation, consequent to which an accused is entitled to be released on bail. The relevant paragraphs are extracted below:

“12. It is no longer res integra that even in cases involving offences under the statutes UAPA, Act and NDPS, Act which provide restrictions, bail can be granted to an undertrial prisoner, who has suffered half of the minimum punishment prescribed and when the delay which has occurred is substantially attributable to the prosecution. More the rigour the quicker the adjudication ought to be. The exposition of Article 21 of the Constitution in the case of Hussainara Khatoon Vs. Home Secretary, State of Bihar, Patna reported in 1980 (1) SCC 98 was exhaustively considered afresh in the case of Abdul Rehman Antulay & Others Vs. R. S. Nayak & Another, reported in 1992 (1) SCC 225 and it has inter alia been observed that a fair, just and reasonable procedure implicit in Article 21 creates a right in favour of the accused to be tried speedily and long delay may be taken as presumptive proof of prejudice. For computing half of the sentence for life, the sentence may be deemed as imprisonment for 20 years and in the present case the petitioners had already suffered long incarceration for more than ten years. The provisions of Section 436 - A of the Code cannot stand in the way towards grant of bail where the delay towards conclusion of trial had occasioned due to no fault on the part of the accused. In a very recent judgment delivered by the Hon'ble Supreme Court in the case of Satender Kumar Antil (supra) detailed guidelines have been laid down for grant of bail without fettering the discretion of the court concerned and keeping in mind the statutory provisions it has been observed that once a trial starts, it should reach the logical conclusion and even though court alone cannot be faulted for the adjournment given but even such

delay on the part of the court would certainly violate Article 21. Whatever may be the nature of the offence, a prolonged trial against an accused would be violative of Article 21.

13. *Applying the proposition of law as laid down in the judgments discussed above, to the facts of this case, we are of the opinion that further detention of the petitioners is not warranted.”*

Reference was also made to *Prasanta Patra V. State of West Bengal*, in C.R.M. (DB) 2050 of 2022, wherein the Hon’ble High Court was pleased to release the petitioner on bail, relying upon the judgment of *Union of India Vs. K.A. Najeeb*, reported in (2021) 3 SCC 713, by applying the principles of Section 436A of the Code of Criminal Procedure.

Reference was also made to *Saudan Singh v. State of Uttar Pradesh* reported in (2023) SCC 446, wherein the appellant was found in custody for 17 years and had completed more than 14 years of sentence, wherein it was directed that until and unless there are extenuating circumstances, after the period of 10 years, a person who is in custody should be released on bail.

Mr. Chatterjee, Learned Senior Advocate appearing on behalf of the de-facto complainant submitted that the present case has a chequered history as in the year 2009 the present petitioner/Biplab Chhettri along with one Chanchal Sarkar an advocate of Raiganj Court opposed the cable business of the deceased and on the issue the present petitioner along with the other, shot and murdered one Biswajoy Ghosh @ Dhapu, who was a photo journalist of the company owned by the deceased i.e. RCTV. A murder case was registered at Raiganj Police Station being Raiganj P.S. Case No.

379/2009. The CID investigated the case and a charge-sheet was filed against the present petitioner along with Chanchal Sarkar and other assailants. After the said case was registered, the petitioner along with others have attacked the husband of the complainant and his office employees on multiple occasions and threatened to kill them. The deceased and his office employees even after receiving threats on different occasions, were ensuring that the culprits of the murder case are appropriately punished and supported the family of Biswajoy Ghosh @ Dhapu.

It was contended on behalf of the de-facto complainant that the present petitioner was granted bail in connection with the earlier case being Raiganj P.S. Case No. 379 of 2009. After which trial was delayed at his instance and during the pendency of the trial, the committed petitioner murdered the husband of the present complainant. The husband of the petitioner was a witness in the earlier case being Raiganj P.S. Case No. 379 of 2009 and the present petitioner intended to get rid of him not only for the issues arising out of the cable TV business, but also to prevent the deposition of the deceased in Court as a witness.

It was further complained that the present petitioner is a habitual offender and when the police team proceeded to arrest him in connection with the instant case, the petitioner attempted to escape by jumping from the 4th floor of a hotel resulting in self-inflicted injuries and subsequent hospitalization.

Further, from the order sheet it will reflect that in course of entering the Court room, the present petitioner threatened a witness, which was

brought to the notice of the Court when an apology was prayed on behalf of the accused. The order dated 13.05.2014 would speak for itself about the incidents which happened in the Court.

Another accused in the principal case of Raiganj P.S. Case No. 379/2009 was denied bail by this Court in its order dated 11.06.2025 in C.R.M. (M) 429 of 2025. The said accused is in custody for more than 12 years.

Learned Advocate for the de-facto complainant therefore submitted that in the present case, the evidence of all the witnesses are over. The examination under Section 313 of Cr.PC is over and the accused has delayed the argument of the case from September 27, 2024 till April 21, 2025. From where it would appear that on several occasions, the argument of the defence was heard in part. The defence in this case was commencing their argument. The Court was transferred and thereafter the petitioner taking advantage of the same has prayed for bail. In the meantime, one of the accused, Ismail Ali was granted bail on 11.09.2025 by the Co-ordinate Bench on the grounds of Article 21 of the Constitution of India. However, it is contended on behalf of the de-facto complainant that the said Ismail Ali was not an accused in the earlier case being the Raiganj P.S. Case No. 379 of 2009. It was also pointed out that in C.R.M. (M) 1221 of 2025, the Co-ordinate Bench while granting bail to Ismail Ali categorically observed that the In-Charge of the Learned Trial Court is directed to dispose of the matter as expeditiously as the business of the Court would permit, without granting any unnecessary adjournment to either of the parties. Records do

not reflect that such order was brought to the notice of the Court. Consequently, the petitioner is not entitled to the benefit of Article 21 of the Constitution.

In order to fortify his argument that, the petitioner is not entitled to the benefit of bail in the present set of circumstances, reference was made to *Harjit Singh v. Inderpreet Singh*, reported in (2021) 19 SCC 381, emphasis was made to paragraphs 13 and 14 which reads as follows:

“13. *From the material on record, it is clear that as and when he is granted bail, he came out of the jail, committed another offence and again went to jail. Even the High Court cancelled the bail in another case vide order dated 26-7-2019 [Jaskaran Singh v. State of Punjab, 2019 SCC OnLine P&H 6026] specifically observing that while on bail during the pendency of the appeal, they were involved in other cases of heinous crime. From the material on record, it appears that there is a high possibility of threat and danger to the life and safety of the appellant herein/complainant and his family members, as is evident from the criminal history of Respondent 1, detailed above.*

14. *The aforesaid relevant considerations are not at all considered by the High Court in its true perspective. Grant of bail to Respondent 1 herein does not appear to be in order. The antecedents of Respondent 1 herein; the threat perception to the appellant and his family members are also not considered by the High Court. We are of the opinion that the High Court has erred in granting bail to Respondent 1 herein without taking into consideration the overall facts, otherwise having a bearing on exercise of its discretion on the issue. The order passed by the High Court fails to notice material facts and shows non-application of mind to the seriousness of the*

crime and circumstances, which ought to have been taken into consideration.”

Learned Advocate for the de-facto complainant relied upon *Neeru Yadav v. State of U.P.*, reported in (2016) 15 SCC 422. Learned Advocate emphasised that the principles of granting bail would obviously incorporate in its ambit the nature and gravity of the accusation, the severity of the punishment, the character, behaviour, means, position and standing of the accused, and likelihood of the offence being repeated. Petitioner is a repeat offender in the present case and there is every possibility of the petitioner committing a similar offence if he is released on bail and as such referred to paragraph 12, 13 and 15 of the judgment which are extracted below:

“12. *In Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , while dealing with the Court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a catena of judgments on that point. The Court proceeded to enumerate the factors: (SCC p. 499, para 9)*

“9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

13. *We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:*

*“Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere; and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.” [Alfred Howard, *The Beauties of Burke* (T. Davison, London) 109.]*

15. *This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter*

involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.”

Attention of the Court was drawn to *Ramesh Kumar Singh v. Jhabbar Singh*, reported in (2003) 10 SCC 195, wherein it was held that if a person while on bail has misused his liberty, the said accused is not entitled to the same privilege of being released on bail. Attention of the Court was drawn to paragraph 2 of the judgment which reads as follows:

“2. *This case exhibits the callousness on the part of the High Court in the matter of granting bail. The respondent having been tried for committing an offence under Section 302 IPC was convicted and sentenced to imprisonment for life in the year 1984. It was found that he had killed the father of the complainant. Against his conviction and sentence he preferred an appeal and while the appeal was pending before the High Court, the High Court was persuaded to release him on bail. While on bail, he committed the present offence of murdering two brothers of the complainant on 3-9-1996. This case ended in conviction of the respondent by judgment dated 6-12-1999 and he has been convicted under Section 302 IPC and sentenced to imprisonment for life. Against his conviction he carried the matter in appeal to the High Court and while the appeal is pending, the High Court released him on bail by the impugned order dated 5-5-2000, on the ground that the co-accused have been released on bail. It is stated to us that the bail granted to the co-accused has been cancelled in the meantime by this Court. Even*

without that, an accused who had misutilized the liberty that was granted to him earlier by committing murder while on bail, was not entitled to the privilege of being released on bail. The impugned order granting bail is set aside and we direct the accused be arrested and taken into custody forthwith. The appeal stands disposed of accordingly.”

Learned Advocate appearing for the de-facto complainant relied upon *State of Karnataka v. Sri Darshan*, reported in 2025 SCC Online SC 1702, and referred to various findings in the different paragraphs referred to in the judgment for emphasizing the different parameters to be considered in respect of bail to be granted and in case of similar set of circumstances, the guidelines to be followed by the High Court. The relevant part of the judgment which has been emphasized by the Learned Advocate is quoted below:

“20.4. Filing of charge sheet or lengthy list of witnesses does not justify grant of bail.

20.4.1. *It is well settled that the mere filing of a charge-sheet does not confer an indefeasible right to bail. Likewise, the mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during investigation, or the likelihood of tampering with witnesses.*

20.4.2. *In Kalyan Chandra Sarkar v. Rajesh Ranjan (supra), this Court categorically held that:*

*“The High Court could not have allowed the bail application on **the sole ground of delay in the conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of prima facie case, gravity of offence, and the allegation of tampering with the***

witness by threat and inducement when on bail.... non-consideration of the same and grant of bail solely on the ground of long incarceration vitiated the order...”

20.4.3. In *Brijmani Devi v. Pappu Kumar* (supra), this Court held that the possibility of the accused absconding or threatening witnesses had a direct bearing on the fairness of the trial. In serious offences, such apprehensions - when reasonably supported by record - must weigh against the grant of bail.

20.4.4. Similarly, in *Ishwarji Nagaji Mali v. State of Gujarat* (supra), this Court reiterated that the fact that the prosecution case rests on circumstantial evidence is not a valid ground to release the accused on bail, especially where a complete chain of circumstances has been *prima facie* established during investigation. The Court cancelled the bail granted by the High Court in that case holding that:

“6. the High Court has not at all adverted to the material collected during the course of the investigation. The High Court has not at all considered the material/evidence collected during the course of the investigation even *prima facie* and has directed to release respondent no. 2 in such a serious offence of hatching conspiracy to kill his wife, by simply observing that as it is a case of circumstantial evidence, which is a weak piece of evidence, it is not legal and proper to deny bail to respondent no. 2. **Merely because the prosecution case rests on circumstantial evidence cannot be a ground to release the accused on bail, if during the course of the investigation the evidence/material has been collected and *prima facie* the complete chain of events is established.** As observed hereinabove, while releasing respondent no. 2 on bail, the learned Single Judge of the High Court has not at all adverted to and/or considered any of the material/evidence collected during the course of the investigation, which is a part of the charge-sheet.

7. One another reason given by the High Court to release respondent no. 2 on bail is that the accused has deep root in the society and no apprehension as to flee away or escape trial or tampering with the evidence/witnesses is expressed. In a case of committing the offence under Section 302 read with 120B IPC and in a case of hatching conspiracy to kill his wife and looking to the seriousness of the offence, the aforesaid can hardly be a ground to release the accused on bail.”

20.4.5. In *Rahul Gupta v. State of Rajasthan*, this Court further emphasized that once the accused has been charge-sheeted after investigation, the High Court must consider the material collected during investigation to determine whether a prima facie case exists and whether bail is justified. The Court quashed the bail order, directing the accused to surrender and remanding the matter to the High Court for fresh consideration, after examining the evidence on record.

20.4.6. In the present case, the High Court failed to engage with the incriminating material collected during investigation, despite the seriousness of the offence under Section 302 IPC and the allegation of conspiracy. The mere filing of the charge-sheet, the existence of a long list of witnesses, or the possibility of delay in trial, cannot, by themselves, constitute valid reasons to dilute the gravity of the offence or to disregard the case put forth by the prosecution. As repeatedly held by this Court, such factors are not standalone grounds for the grant of bail in heinous offences involving murder. The reasoning adopted by the High Court to justify the grant of bail is, therefore, contrary to settled legal principles.

22. We now turn to a detailed examination of the above contentions.

(a) Nature and Gravity of the offence

22.1. The seriousness and heinous nature of the alleged offence is a significant factor for consideration, while evaluating a plea for cancellation of bail.

22.1.1. *In Ram Govind Upadhyay v. Prasanta Patra*, this Court held that “the nature of the offence is one of the basic considerations for the grant of bail - the more heinous the crime, the greater the chance of refusal of bail, though the exercise of judicial discretion in such matters cannot be exhaustively defined.”

22.1.2. Similarly, in *Panchanan Mishra v. Digambar Mishra*, the Court observed that “the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty from tampering with the evidence in heinous crimes.”

22.1.3. In the present case, the accused along with the co-accused, is charged under Sections 120B, 302, 201 and 204 IPC, which relate to conspiracy, murder, destruction of evidence, and causing disappearance of evidence. The allegation is of a brutal and custodial murder of a young man, who was allegedly kidnapped, tortured, and beaten to death by the accused for sending objectionable messages to A2. The victim was a 26-year-old daily wage earner, and the crime was allegedly committed to protect the reputation of A1, the partner of A2, a celebrity.

22.1.4. This is not a case of sudden provocation or emotional outburst. The evidence indicates a pre-meditated and orchestrated crime, where the accused not only allegedly took the law into his own hands, but also engaged in systematic destruction of evidence, including: deleting CCTV footage, bribing co-accused to falsely surrender, and using police and local influence to derail the investigation.

22.1.5. As this Court warned in *Jagan Kishore v. State of A.P.*, the grant of bail in cases involving custodial torture and extra-judicial execution of an alleged offender erodes public confidence in the rule of law. Thus, the very gravity of the offence justifies cancellation of bail, especially when the liberty granted to A2 is likely to subvert the integrity of the trial process.

(b) Likelihood of tampering with evidence and influencing witnesses

22.2. *The record reveals concrete acts of interference with the investigation including:*

- *A2's role in orchestrating false surrenders by co-accused (A10, A14);*
- *Payments made to cover up the crime (as per co-accused statements);*
- *Connections with police officials who delayed and diluted the FIR and postmortem procedures;*
- *Deletion of CCTV evidence from A1's residence;*
- *Continued influence over prosecution witnesses, as seen from public appearances after bail.*

22.2.1. *In Puran v. Rambilas, this Court categorically held that “Cancellation of bail is permissible where the order granting bail was perverse, or if the accused tampers with evidence or attempts to influence witnesses.”*

22.2.2. *In State v. Amarmani Tripathi (supra), this Court stated that “the Court must examine the likelihood of the accused tampering with prosecution witnesses or attempting to subvert justice. Bail should not be granted if the accused is likely to interfere with the trial process.”*

22.2.3. *Further, it was held that “even the likelihood of the accused influencing witnesses or tampering with evidence is sufficient to deny bail.” In Deepak Yadav v. State of UP, bail was cancelled owing to apprehension of tampering with witnesses.*

22.2.4. *In P v. State of M.P., the Court held that bail can be cancelled if the accused:*

- *attempts to tamper with evidence;*
- *influences witnesses;*

- induces others to make false statements;
- or even if there is a genuine apprehension of miscarriage of justice.

22.2.5. *The appellant alleged that A2 is not merely misusing liberty post-bail but is the mastermind of efforts to derail the investigation. In such circumstances, the preponderance of probabilities test applies (as per Sanjay Gandhi v. Delhi Administration case) and the prosecution need not prove guilt beyond reasonable doubt at this stage.*

(c) Bail obtained on misrepresentation of medical grounds

22.3. *The bail order dated 13.12.2024 passed by the High Court, was granted primarily on the basis of the alleged urgent medical condition of the 1st respondent/A2. However, a bare perusal of the medical records and subsequent conduct of the accused reveals that the medical plea was misleading, vague, and grossly exaggerated.*

22.3.1. *This Court has consistently held that bail granted on medical grounds must be based on credible, specific, and urgent need, not on general or future apprehensions. [Refer: State of U.P. v. Amarmani Tripathi and Dinesh M.N. v. State of Gujarat, (supra)].*

22.3.2. *The discharge summary dated 28.11.2024 issued by the hospital, mentions that A2 is a patient with a history of diabetes, hypertension, and prior cardiac issues, and that he may require a CABG surgery in the future. However, the report does not indicate: any current emergency or need for immediate medical intervention; any life-threatening condition warranting urgent release; and any inability of the prison medical system to manage his current state. Thus, there is no compelling medical necessity for grant of bail.*

22.3.3. *In Puran v. Rambilas (supra), this Court held that “if it is shown that a party obtained bail by misrepresentation or fraud, or by suppressing material facts, such bail is liable to be cancelled on that ground alone”. Similarly, in State of U.P. v. Narendra Nath*

Sinha, it was observed that “bail obtained by concealing facts or misleading the court vitiates the order, as it defeats the interest of justice”.

22.3.4. *Contrary to the impression created before the High Court, A2 has made multiple public appearances, including participation in high-profile social events, was seen in fine health and mobility, and did not undergo any surgery or serious medical procedure post-release. This establishes that he abused the liberty of bail, which was obtained on a false and misleading premise.*

22.3.5. *In Kalyan Chandra Sarkar v. Rajesh Ranjan (supra), this Court cautioned that “bail on medical grounds can be granted only in exceptional cases where the medical condition is serious, cannot be treated in custody, and necessary facilities are not available in jail”. The burden to prove such necessity lies on the accused.*

22.3.6. *In the present case, A2 failed to demonstrate that the jail hospital was incapable of managing his condition or that adequate treatment could not be given in judicial custody. Instead, the High Court proceeded to grant bail without recording a definitive finding on the urgency, seriousness, or inadequacy of treatment in custody. This results in a perverse and legally unsustainable bail order, liable to be cancelled as per the principles laid down in Puran and Samarendra Nath Bhattacharjee v. State of West Bengal.*

(d) Non-consideration of material facts by the High Court

22.4. *An order that overlooks material evidence or proceeds on an erroneous premise is perverse, and such perversity forms a valid ground for cancellation or setting aside of bail.*

22.4.1. *In Mahipal v. Rajesh Kumar (supra), this Court laid down that “where the order granting bail is founded on irrelevant considerations, or non-consideration of material facts, the same is rendered perverse and is liable to be set aside.” Similarly, in State of U.P. v. Amarmani Tripathi (supra) the Court held that “bail orders*

must be founded on a careful and judicious application of mind to the facts of the case and the seriousness of the offence. Non-consideration of relevant material renders the order vulnerable to challenge.”

22.4.2. *In the present case, the High Court failed to properly evaluate the nature of allegations, involving premeditated murder and conspiracy, attracting Section 302 IPC read with section 120B IPC; the chain of circumstantial evidence, including CCTV footage, call records, and the forensic report showing deliberate attempt to destroy evidence (e.g., disposal of blood-stained clothes and vehicle cleaning); and the incriminating role of A2, who was in constant touch with A1 and other co-accused before and after the incident, and who facilitated the conspiracy and cover-up. On the other hand, it simply recorded that A2 had “no direct role” and there was “no prima facie case”, without discussing or analysing the incriminating material on record. This amounts to non-application of mind, and renders the order unsustainable in law.*

22.4.3. *In Neeru Yadav v. State of U.P. (supra), this Court reversed the grant of bail observing that “Where the High Court ignores vital circumstances and material facts, the order becomes indefensible”.*

22.4.4. *In the present case, the High Court, while granting bail, recorded that A2 was not present at the crime scene, but at the same time, accepted that he was in telephonic contact with other accused at crucial times. Similarly, it noted that there was no strong motive, while also acknowledging post hostility and prior enmity with the deceased. These contradictory findings neutralize the basis for bail and indicate that the order was passed without a coherent or legally consistent rationale.*

22.4.5. *In offences punishable with life imprisonment or death, the bail court must be especially cautious. In Ash Mohammed v. Shiv Raj Singh (supra), this Court emphasized that in serious offences, “the gravity of the offence and its impact on society must weigh*

heavily with the court, and such cases must be considered with greater care and circumspection". However, in the present case, the High Court's order fails to reflect any such higher scrutiny or cautious approach, despite the seriousness of the charge and the wider societal impact of the case."

Learned Advocate thereafter referred to *State of Bihar v. Amit Kumar*, reported in (2017) 13 SCC 751, and submitted that when the seriousness of the offence appeals to the Court then the mere fact that the accused is in jail for a long time should not be the concern of the Court. To that effect, attention was drawn to paragraph 8 of the said judgment which reads as follows:

"8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar."

Learned Advocate also relied upon the judgment of *Gobarbhai Naranbhai Singala v. State of Gujarat*, reported in (2008) 3 SCC 775, and submitted that the petitioner has already prayed for bail before this Court on several occasions which were rejected on merits. The sole ground in the present case for release at the stage of arguments of the case would jeopardize the outcome of the case. Reference was made to paragraphs 18, 20, 21, 22 24, 26, 27 and 28 of the said judgment which are extracted below:

“18. *The High Court by the impugned order has granted bail to the respondent Jayrajsinh Jadeja (in the second case) on three grounds — (i) that the respondent was in judicial custody since March 2004; (ii) that trial had yet not commenced and no prosecution witness had been examined; and (iii) that the Court had tested the respondent twice by granting temporary bail to him with stringent conditions for a duration of one month each i.e. from 27-12-2005 to 27-1-2006 and 6-3-2006 to 5-4-2006 and, on both the occasions, the respondent had surrendered within time, without breach of any of the conditions.*

20. *That the respondent did not misuse his liberty while on temporary bail twice by itself is no ground to grant bail in a murder case especially when he was allegedly involved in a subsequent case of murder. It may be mentioned here that apart from the present two cases of murder, the respondent has been named in 10 other criminal cases in the last 25 years or so, out of which 5 cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder. We are informed at the Bar that the respondent has been acquitted in most of the cases for want of sufficient evidence. This speaks volumes. We refrain from saying anything further, lest it may prejudice the trial in these two cases.*

21. *The other reason given in the impugned order is that the trial of the case has not progressed/begun. We find from the record that between 2-6-2004 and 19-12-2005 the case was listed before the trial court 31 times and on each date, it had to be adjourned on the ground that one or the other accused was not present. There are 16 accused in the case. It is not clear from the record whether the accused were not brought by the police from the jail or that they were on bail and had not appeared of their own, but the fact remains that the complainants were not in any way instrumental in delaying the trial between 2-6-2004 and 19-12-2005. It was brought to our notice that the only witness who has been examined so far*

has turned hostile. Trial was stayed by the High Court on 15-2-2007 at the instance of the appellant as Shri R.R. Trivedi, APP, to whom the case had been assigned for conducting the trial and was allegedly the counsel for the respondent in some other case earlier, continued to appear in the case in spite of the fact that he was replaced by another APP. It just shows that the trial was not progressing smoothly. In any case, the complainant party was in no way responsible for any delay in trial.

22. *The third reason given by the High Court for grant of bail, that the respondent had been in jail for the last more than 2 years, is equally untenable in view of the observations made by this Court in State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] : (SCC p. 32, para 19)*

“19. ... ‘14. ... the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.’ ” [Ed.: As observed in Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 at pp. 536-37, para 14 : 2004 SCC (Cri) 1977.]

(underlining [Ed.: Herein italicised.] is ours)

24. *This Court in Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] had held that while considering the application for bail, what is required to be looked is, (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail.*

26. *We are of the view that the High Court has completely ignored the general principles for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, is death or life imprisonment.*

27. *In the second case, another learned Judge has granted the bail by the impugned order which runs into 22 pages. The findings recorded therein touch upon the merits of the case. The learned Judge has proceeded as if an order of acquittal is being passed. This Court in Amarmani Tripathi case [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] has held that a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice is caused. Only a brief examination is to be done to satisfy about the facts and circumstances or otherwise of a prima facie case.*

28. *Taking the overall view of the entire matter and in particular of the antecedents of the respondent Jayrajsinh Temubha Jadeja, the alleged statements made by the witnesses, who were present at the spot, to the police and the admitted enmity between the parties (which is a double-edged weapon to commit the crime as well as to falsely implicate), we are of the view that it was not a fit case to grant bail to the respondents in this case as well. Without elaborating further, we set aside the impugned orders granting bail*

to the respondents. The respondents are directed to surrender to the judicial custody forthwith. In case, the respondents do not surrender within seven days, steps be taken, in accordance with law, to apprehend them”.

I have considered the submissions of learned advocates appearing for the petitioner, state and the de-facto complainant. The summary of events reflect that petitioner being an accused in connection with Raiganj P.S. Case no. 379/2009, while on bail has been involved in the present case being Raiganj P.S. Case No. 14/2013. Both the cases are murder cases.

In Raiganj P.S. No. 379/2009, a photo journalist named Biswajoy Ghosh @ Dhapu was murdered. The deceased Biswajoy Ghosh @ Dhapu was attached/employed with RCTV and the deceased Sanjib Bardhan was one of the owners of RCTV.

In Raiganj P.S. Case No. 14/2013 the said Sanjib Bardhan (husband of the de-facto complainant) was murdered. The deceased Sanjib Bardhan was the witness of Raiganj P.S. Case No. 379/2009.

Present petitioner is accused in both the cases and while on bail in the earlier case, has been the mastermind of the present offence.

Learned Senior Advocate for the petitioner relied upon *Hussainara Khatoon (Supra)*, *Satender Kumar Antil (Supra)*, *Tapas Kumar Palit (Supra)*, *Akhil Chandra Ghosh (Supra)*, *Mantu Mahato and Ors. (Supra)*, *Prasanta Patra (Supra)* and *Saudan Singh (Supra)*. In each of these cases the subject matter related to delay in trial and its effect on liberty of a citizen. None of

the aforesaid cases relied by the petitioner dealt with similar factual circumstances of accused/offenders, who while on bail in a murder case was allegedly involved in commission of murder of a witness of the earlier case.

In *Gulfisha Fatima v. State (Govt. of NCT of Delhi)* reported in 2026 SCC OnLine SC 10, it has been observed in paragraphs 58 and 59 as follows:

“58. In Gurwinder Singh v. State of Punjab, this Court expressly cautioned against the mechanical invocation of prolonged incarceration as a ground for bail in cases involving serious offences under special enactments. The judgment reiterates that the gravity of the offence, the legislative context, and the prima facie material on record cannot be eclipsed merely because the trial has taken time.

59. This Court in CBI v. Dayamoy Mahato reiterated that while Article 21 remains paramount, it does not operate in a vacuum divorced from competing constitutional interests. The Court emphasized that claims to liberty must be examined in the totality of circumstances, particularly where allegations implicate organised criminality or matters of public interest. Delay, though undoubtedly significant, was held not to assume the character of an absolute or solitary determinant. The emphasis, once again, was on structured judicial reasoning rather than on formulaic outcomes.”

On an assessment of the submissions advanced by the petitioner, state and the de-facto complainant along with the settled proposition of law, following issues emerge:

- (a) Petitioner is involved in two murder cases and the present offence has been allegedly committed to eliminate a witness of the first case.

Naturally the gravity and heinousness of the offence weighs against the accused.

- (b)** The stage of the case reflects that the examination of the prosecution witnesses are over, the examination of the accused under Section 313 Cr.PC is over, the arguments of the prosecution are also over and on behalf of the accused, arguments commenced on 27.09.2024 and continued till 21.04.2025 when the Presiding Officer was transferred.
- (c)** The prosecution case is centred around the accused as such the issue relating to parity that two other accused persons have been granted bail do not enure any advantage to the petitioner.
- (d)** The time period consumed for continuing with the arguments on behalf of the accused itself raises a question whether by way of stretching the time during arguments petitioner can claim benefit of right to speedy trial. At this stage there is nothing on record to suggest that whether the prosecution or judicial system contributed to the delay.
- (e)** As has been pointed out earlier that Article 21 of the Constitution of India cannot be read without assessing the overall circumstances of the case, I am of the opinion that this is not a fit case for granting bail.

Accordingly, CRM (M) 1894 of 2025 is dismissed.

Pending applications, if any, stands disposed of.

A copy of the judgment be forwarded to the learned District & Sessions Judge, Uttar Dinajpur, Raiganj immediately for compliance regarding the directions passed in C.R.M. (M) 1221 of 2025.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

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(Tirthankar Ghosh, J.)