

2.
07-01-2026
(ct. no.04)
debajyoti
(rejected)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CRIMINAL MISCELLANEOUS JURISDICTION
Appellate Side

CRM (M) 344 of 2025

In re: An application for bail under Section 439 of the Code of Criminal Procedure/483 of the Bhartiya Nagarik Suraksha Sanhita in connection with Sitalkuchi Police Station Case No.83 of 2021 dated 10-04-2021 under Sections 147, 148, 149, 302 and 307 of the Indian Penal Code and Section 3 of the Explosive Substances Act read with Section 34 of the Indian Penal Code and under Sections 3(1)(1), 3(2)(V) and (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act read with Sections 25, 27 of the Arms Act.

- A n d -

In the matter of : Subhash Barman & Anr.

.... Petitioners.

Mr. Subham Ghosh, Adv.,
Mr. Mayank Roy, Adv.

... For the Petitioners.

Mr. Sudipto Kumar Mazumdar, learned DSGI,
Mr. Ajoy Kumar Singhanian, Adv.

... For CBI.

1. It is submitted by the learned advocate appearing on behalf of the petitioner that this is the third application filed at the instance of the petitioner under section 483 BNSS and lastly the prayer was turned down on 22.04.2024.

2. The factual matrix of the prosecution story is that on 10.4.2021 when Gobindo Barman and his brother Ananda Barman went to cast vote at their polling booth around 8.00hrs some persons in a motor cycle started hurling bombs and also started firing and out of those persons Hakim Mia fired targeting Ananda Barman and he sustained bullet injuries in his abdomen and right leg and he fell down on the road . In course of investigation The petitioner no 1 joined the gang and was present at the spot .The petitioner no 2 hit the

deceased with bamboo sticks on his neck .Dinoy Barman of the same locality also sustained bullet injury fired by Karim Mia. Ananda Barman when taken to BPL Hospital he was declared dead. Later on vide an order passed by the High Court the investigation was handed over to CBI .

3. The petitioner was shown arrest on 9.2.2023 and the petitioner no 2 voluntarily surrendered on 23.3.2023. Hence, the petitioner No1 is languishing in jail for more than 1062 days and the petitioner no 2 for about 997 days.

4. The learned advocated has raised the following grounds for granting a favorable order to the petitioners. Firstly the prolong incarceration when the charge has not yet been framed and there are 100 witnesses to be examined. That apart against an order of the learned trial court whereby the CBI was directed to handover the copies in compliance of section 230 BNSS a revisional application has been filed and on an incorrect interpretation of such order is delaying the proceeding pending before the trial court.

5. Secondly there is no specific overt act by the petitioner no 1 and the co-accused, similarly circumstanced with the petitioner no 1, has been enlarged on bail. The ground of arrest was not communicated in consonance with the various judicial pronouncement including the recent decision reported in **2025 INSC 1288 Mihir Rajesh Shah vs State of Maharashtra.**

6. The learned DSGI on the other hand raises vehement objection. It is specifically submitted that the petitioners/accused are influential persons and on numerous occasion the prayer for bail of the petitioner and other co-accused was turned down and the ground of prolong incarceration cannot be considered when the allegations are heinous.

7. The Learned advocate has relied upon the decision of the Hon'ble Supreme court in ***X Vs State of Rajasthan*** reported in ***2024 INSC 909*** in this regard. Further argued that mere claim of innocence or in absence of specific allegation of any overt Act cannot be assigned as a reason for grant of bail in a case of serious nature.

8. Heard the submissions of learned advocates for the parties. Perused the materials on record, the contents of the written complaint and the statements recorded in course of investigation and the period of detention covered by the accused/petitioners. It is undisputed that even after submission of charge sheet in the year 2022, the charge has not yet been framed when all the accused persons are in custody and there is no order of stay of the entire proceeding. From the order sheet of the learned court dated July 5, 2025, it can be transpired that on the prayer made by C.B.I and on perusal of the order passed by the Hon'ble court extending the interim order, the date was further fixed for appearance and awaiting order. In this regard, the stand taken by the Learned DSGI that the delay is at the instance of the court only cannot be accepted.

9. So far the merit of the case is concerned, in view of the observation of the Hon'ble Apex Court in the case of ***X - VS- State of Rajasthan (supra)***, it was observed that in serious offences like rape, murder, dacoity etc., once the trial commences and the prosecution starts examining the witnesses, the court, be it the trial court or the High Court, should be loath in entertaining the bail application of the accused.

10. In the case of the ***State of Jharkhand vs Dhananjay Gupta*** neutral citation ***2024 (1) Criminal CC 524***, the Hon'ble Supreme Court specifically held that when accused so arraigned with the aid of section 149 of the I.P.C when the offence alleged *inter alia* includes section 207 I.P.C,

mere claim of innocence or undertaking to participate in the trial or contention of absence of specific allegation of any overt act cannot be assigned as a reason for grant of bail in a case of serious nature.

11. It is settled law that the principal of parity must be balanced against the established factors for consideration of bail like the seriousness /gravity of the offence, the role attributed, nature of evidence and the likelihood of the accused absconding or fleeing from justice and the impact of release the accused on the safety and morale of the society.

12. Therefore, considering the entire facts and circumstances and the nature of accusation and the possibilities of repeating the offence this court is not inclined to allow the prayer. However the prosecution must not take the advantage of the circumstances praying for adjournment on the plea of pendency of the revisional application before the Hon'ble court in absence of any order of stay.

13. Hence the prayer for bail stands refused. The application for bail is **rejected**.

14. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

15. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]