

11.01.2023.
25.
as
(Allowed)

C.R.M. (DB) 4490 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Special Task Force Case No.01 of 2018 dated 02.02.2018 under Sections 120B/121/121A/123/125 of the Indian Penal Code and added Sections 4/5/6 of the Explosive and Substance Act along with Sections 17/18/18A/19/20/21/23 of Unlawful Activities (Prevention) Act and charges were framed under Sections 120B/121A of the Indian Penal Code and Sections 4/5 of the Explosive Substances Act and Section 18/20 of the Unlawful Activities (Prevention) Act.

In the matter of : Sk. Rejaul @ Kiran @ Rutu.
.... Petitioner.

Ms. Jhuma Sen,
Mr. Masum ali Sardar.
...for the Petitioner.

Mr. Ranabir Roy Chowdhury,
Mr. Sandip Chakrabarty.
...for the State.

Petitioner is in custody for about three years. Learned lawyer for the petitioner contends the uncontroverted allegations in the charge sheet do not disclose the ingredients of the charges framed against her client. Co-accuseds were advised to plead guilty and have been awarded to substantive sentence for about six years of rigorous imprisonment on each count which are to run concurrently. Petitioner has suffered incarceration for nearly half of the sentence awarded to the co-accuseds. 54 witnesses have been cited in the charge sheet. Only one witness has been examined. There is little possibility of trial concluding in the near future. Co-accused Abdul Majed is on bail. Accordingly, petitioner prays for bail.

Learned Advocate for the State opposes the prayer for bail. He submits report with regard to the status of the proceeding. He contends petitioner was a member of a terrorist organisation viz., Jamaat-ul-Mujahideen Bangladesh ('JMB' for short). He does not stand on the same footing with the co-accused Abdul Majed who has been enlarged on bail. Anti-national pamphlets/literatures were recovered from his possession.

In response learned Advocate for the petitioner submits 'JMB' was not a terrorist organisation at the time of registration of First Information Report. Petitioner has no criminal antecedents.

We have considered the materials on record. We have also taken into consideration the fact that 'JMB' was not a terrorist organisation at the time of registration of FIR. But the petitioner was arrested in 2020 when the organisation had already been declared as a 'terrorist organisation' under UAPA. It is contended anti national pamphlets/literatures were recovered from his possession. This is, however, disputed by the petitioner.

Though it cannot be said that there are no materials against the petitioner to proceed with the trial, a more seminal issue is raised with regard to inordinate delay in trial infracting the petitioner's fundamental right to speedy trial. In ***Union of India Vs. K. A. Najeeb***¹, the Hon'ble Apex Court, inter alia, held a plea for bail on the ground of inordinate delay is not

¹ (2021) 3 SCC 713

fettered by the restrictions under Section 43D(5) of UAPA. Similar view has been taken in ***Ashim Vs. NIA***².

Petitioner is in custody for about three years. Only one witness has been examined till date. 54 witnesses are cited in the charge sheet and it is left to one's imagination when the trial will conclude. Co-accuseds were advised to plead guilty and have been sentenced to term imprisonment i.e. five years and nine months. Petitioner stands on a better footing than the co-accuseds. He does not have criminal antecedents. No explosive substance was recovered from his possession. As the petitioner has suffered incarceration for almost half of the sentence awarded to the co-accuseds in the same case and the possibility of conclusion of trial is a far cry, we are inclined to enlarge the petitioner on bail subject to strict conditions.

Accordingly, the petitioner viz., Sk. Rejaul @ Kiran @ Rutu shall be released on bail upon furnishing a bond of Rs.25,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judge, City Sessions Court, Calcutta subject to condition that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner while on bail shall not remain within the municipal limits of the city of Kolkata and shall provide the address where he shall presently reside to the Investigating Agency as well as the court below and shall report

² (2022) 1 SCC 695

to the Officer-in-charge of the Police Station within whose jurisdiction he shall presently reside once in a week until further orders.

In the event the petitioner fails to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

The application for bail is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)