

05.07.2022.  
17.  
Ct.No.28.  
as/PA  
(Allowed)

**C.R.M. (DB) 2050 of 2022**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Binpur P. S. Case No.12 of 2010 dated 15.02.2010 under Sections 121/121A /122/124A read with Section 120B of the Indian Penal Code and under Sections 20/16(1)(a)/16(1)(b)/18/38/39 of the Unlawful Activities (Prevention) Act and Sections 3/4 of the Explosive Substances Act and under Sections 25(1)(b) of the Arms Act and Section 302 read with Section 120B of the Indian Penal Code.

In the matter of : Prasanta Patra.

.... Petitioner.

Mr. Kaushik Gupta,  
Mr. Arijit Bhusan Bagchi.

...for the Petitioner.

Mr. Neguive Ahmed, Id. A.P.P.,  
Ms. Zareen N. Khan,  
Ms. Trina Mitra.

...for the State.

Heard the learned Counsels appearing on behalf of the parties.

Petitioner is in custody for more than 12 years. It is contended there is little possibility of trial concluding in near future. Out of 70 witnesses, only 34 witnesses have been examined as yet. It also appears evidence against the petitioner is general and omnibus. Petitioner is suffering from psychiatric problems and had been admitted in the institute of psychiatry in the correctional home. Co-accused Asish Mahata has been enlarged on bail in CRM (DB) 1321 of 2022.

Mr. Neguive Ahmed, learned Additional Public Prosecutor opposes the prayer for bail. He submits petitioner along with

co-accused persons were members of a Maoist organisation and had gunned down 21 Eastern Rifle personnel.

We have considered the materials on record. Allegations are very grave. However, petitioner has suffered undertrial incarceration for more than 12 years and is presently suffering from psychiatric ailments and had to be given institutionalised treatment in the correctional home. Co-accused Asish Mahata has been enlarged on bail in CRM (DB) 1321 of 2022.

In ***Union of India Vs. K. A. Najeeb***<sup>1</sup>, the Apex Court while dealing with the statutory restriction to bail engrafted under Section 43-D (5) of the UAPA Act, inter alia, held as follows:-

***“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonized. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”***

In view of the aforesaid facts and in the light of the ratio of the above cited case, we are of the opinion petitioner is entitled to be released on bail on the ground further detention would amount to infraction of his right to speedy trial under

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<sup>1</sup> (2021) 3 SCC 713

Article 21 of the Constitution of India. We are further persuaded to come to such conclusion keeping in mind the mental health condition of the petitioner who appears to have been a victim of psychiatric condition and was given institutionalised treatment in the correctional home.

We have also considered his bail plea on the ground of inordinate delay in view of section 436-A Code of Criminal Procedure.

Section 436-A of the Code of Criminal Procedure reads as follows;

***“436-A. Maximum period for which an undertrial prisoner can be detained. – Where a person, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:***

***Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:***

***Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”***

Life imprisonment is an indeterminate sentence and it may be argued half of the maximum period of such sentence cannot be mathematically fixed as it depends on the remaining life span of the convict. This will create an absurd position rendering the beneficial impact of the aforesaid provision inapplicable to offences involving life imprisonment. However,

reference may be made to Section 57 of the Indian Penal Code which reads as follows:-

***“57. Fractions of terms of punishment: In calculating fractions of terms of punishment, [imprisonment] for life shall be reckoned as equivalent to [imprisonment] for twenty years.”***

Indian Penal Code and Criminal Procedure Code are complementary legislations in the field of administration of criminal justice. While one relates to substantive law defining offences and prescribing punishments, the other lays down the procedure for investigation, enquiry and trial of such offences. Hence to avoid an absurdity in interpretation of particular provision in the Criminal Procedure Code, namely, 436-A CrPC, it may be apposite to read the said provision in conjunction with section 57 IPC (supra) which, inter alia, provides imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years for calculating a fraction of such imprisonment. Thus, we are of the considered view for computing half of the sentence for life, the sentence may be deemed as imprisonment for twenty years and in the event an undertrial has suffered detention for more than 10 years he may be entitled to bail under section 436-A CrPC.

In the present case, petitioner has already crossed the aforesaid limit and he is in custody for more than 12 years. Nothing is placed before us to show he had contributed to the delay or had played an egregious role in the crime disentitling him to the aforesaid relief under section 436-A CrPC.

For the aforesaid reasons, we are persuaded to extend the privilege of bail to the petitioner.

Accordingly, the petitioner shall be released on bail upon furnishing a bond of Rs.50,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Paschim Medinipore on condition while on bail petitioner shall remain within the jurisdiction of Salboni Police Station and shall report to Officer-in-charge, Salboni Police Station once in a week. 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.

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.

While granting bail to the petitioner, we are equally mindful of the agony of the family members of the deceased police personnel who are eagerly awaiting just punishment of the offenders.

Hence, to avoid further delay which adversely affects both the undertrials and the victims of the crime, we direct the trial Court to take immediate and prompt steps for conclusion of the trial at the earliest without granting unnecessary adjournment to any of the parties.

This application for bail is, thus, disposed of.

**(Ananya Bandyopadhyay, J.)**

**(Joymalya Bagchi, J.)**