

In the Court of the Judge, 2nd Special Court, Calcutta
Special Case No.02 of 2024 (Computer Registration No.02 of 2024)
CNR No. WBCS01-000119-2024

Order No.65
25.02.2026

Today is fixed for further hearing of the petition for bail filed on behalf of A-1 Kanchan Kumar.

Accused Kanchan Kumar is produced from judicial custody through video conference.

Both the learned public prosecutors in charge are also present.

IO is present.

Learned advocate for the accused persons submits that the accused person has been languishing in judicial custody since the date of arrest on 16.09.2023 and the evidence of prosecution has already been completed. It is submitted that there is no chance of tampering with the evidence at this moment. It is further submitted that except the present accused person, the other accused person namely Raj Kumar Roy is already on bail. It is further submitted that the accused person has got his home and hearth within West Bengal and there is no chance of his abscondence.

The learned advocate for the accused person further submitted that as per guideline issued by National Legal Service Authority (NALSA) special care should be taken while disposing the bail application aged more than 70 years. As per submission of the learned advocate, the present accused person is about 75 years old and accordingly, his prayer for bail should be sympathetically considered.

According to the learned advocate for the accused person, he is suffering from various ailments due to his old age and as such, by keeping him behind the bar, no fruitful result will be achieved.

The learned advocate for the accused person lastly submitted that the accused person was an agent of the bank and as such, he is a public servant within the meaning of Section 21 of the Indian Penal Code and to prosecute him, sanction is required under section 197 of the Code of Criminal Procedure. It is stated that prosecution did not bring on record that any sanction was taken from the appropriate authority to prosecute the accused person and as such, from the very initial stage of proceeding, that is from taking cognizance till the entire evidence, are bad in law. In that view of the matter, it is prayed that the accused person shall be released on bail on any terms and condition. In support of his contention the learned advocate for the accused person relied on the decision of Manish Sisodia Vs. Directorate of Enforcement, Javed Ghulam Nabi Shaikh Vs. State of Maharashtra, Sheikh Javed Iqbal alias Ashfaq Ansari Vs. State of U.P. passed by Hon'ble Apex Court, and Manjit Singh Vs. State of Punjab passed by Honble High Court at Punjab and Haryana.

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The learned special public prosecutor raised objection regarding the bail of the accused person. It is submitted that the prayer of bail for the accused person was rejected by this court three times and the accused moved before the Honble High Court for bail. It is submitted that at the time of hearing of the bail petition before the Hon'ble High Court, on behalf of prosecution, an undertaking was given that the evidence will be concluded within six months. It is submitted that the evidence on the part of the prosecution was concluded in six months but due to long cross examination of the Investigating Officer covering several dates, it exceeded six months and few days. It is further submitted that at the time of arrest, the accused person was more than seventy years and the principal laid down in NALSA guidelines have already been considered each and every time and this is not a chain of circumstances. It is further submitted that the accused person is in custody for about two years and the maximum punishment for the alleged offence punishable under section 409 of the Indian Penal Code, is not less than ten years which may extend to life imprisonment. Therefore the accused person is not entitled to get any benefit under section 436A of the Code of Criminal Procedure.

Lastly, the learned special public prosecutor submitted that to prosecute a public servant as defined under section 21 of the Indian Penal Code, sanction for prosecution is not required in all cases. Accordingly to the learned special public prosecutor, the public servants who are removable from their service by an order of the government are the only public servants for whose prosecution sanction is required as contemplated under section 197 of the Code of Criminal Procedure. It is further submitted that the accused person was an agent of the bank and his agency can be terminated at will and hence to prosecute him, no sanction is required. It is further submitted that in case bail is granted at this stage, the accused person may abscond and the entire attempt of the prosecution for speedy trial of the case will be a futile attempt.

I have gone through the case record. From the case record it appears that the accused Kanchan Kumar is in custody since 16.09.2023 and his bail petition was rejected by this court on 19.02.2024, 26.11.2024 and 18.02.2025. It further appears that the bail petition of accused person was rejected by Hon'ble High Court on 25.04.2025 vide CRM No.(M) 180 of 2025.

Though it was submitted that the accused person has been suffering from various ailments, but no document has been filed by the accused person

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to show that the accused person is suffering from various ailments or his health condition has deteriorated. It further appears that the accused person was more than seventy years at the time of his arrest and accordingly, the argument advanced by the learned advocate for the accused person is not a new ground for granting bail. It further appears that the evidence of prosecution has already been completed and the case will be disposed of after examination of the accused persons under section 313 of the CrPC and after hearing the argument. The learned special public prosecutor submits in open court that after examination of the accused persons under section 313 of the CrPC, they will argue the matter and will complete the same in one day and hence, for any reason if the accused person is released on bail, the prosecution will be prejudiced.

In the decision laid down by Hon'ble Apex Court in Manish Sisodia's case has been pleased to observe that there is no chance of immediate trial as 493 witnesses were required to be examined and documents consisting lakhs of pages are required to be seen. But in the case in my hand, the evidence has already been completed and accordingly, the facts and circumstances of the case are quite different from the facts and circumstances of Manish Sisodia's case. Hence, the principal laid down in Manish Sisodia's case is not applicable in connection with this case.

Similarly, the facts and circumstances of the other decisions cited by the learned advocate for the accused person are different from the present case and hence, not applicable.

I further like to state that after conclusion of evidence of all the witnesses of the prosecution, I am not inclined to look into the matter of taking cognizance whether bad in law or not and this question remains open and both the parties are at liberty to raise this issue at the time of argument of this case. After completion of evidence by the prosecution, granting of bail to an accused person only on the ground of irregularity or illegality of taking of cognizance is not permissible. Furthermore, considering the entire facts and circumstances of the case, I am of the view that there is no change in circumstances since the date of rejection of the bail of the accused person on 25.04.2025 by the Hon'ble High Court at Calcutta. Furthermore, at the fag end of this case, the possibility of abscondence of the present accused person cannot be ruled out.

Considering all the above facts and circumstances of the case, the prayer of bail filed by accused Kanchan Kumar **stands rejected.**

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At the time of hearing, a question cropped up whether the accused person has a right to file bail petition under section 437 CrPC repeatedly or not to which learned special public prosecutor considered that an accused has every right to file successive bail petition after rejection of the former bail petition on change of circumstances. I also endorse this view.

To **06.03.3026** for physical production of the accused person for examination under section 313 of the Code of Criminal Procedure. Both the accused are directed to remain physically present on the next date fixed.

Dictated and corrected by me

**Judge-in-charge, 2nd Special Court,
Calcutta**

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