

SESSIONS CASE NO.23 OF 2023
CNR NO.WBCS01-000304-2023
S.T. NO.1(03) OF 2020 (OLD)
Present: Sri Soumendra Nath Das
Chief Judge, City Sessions Court, Calcutta
J.O. CODE NO.WB01132

Order no. 171 dated 12.03.2024

Today is fixed for production of the eight accused persons, hearing of the bail application dated 11.03.2024 filed by the Ld. Defense Counsels on behalf of Sk. Md. Anisur Rahman, examination of witness C.S.W-55 and examination of other CSWs before this Court including the vulnerable witnesses, if any.

The accused persons namely, 1) Sk. Md. Anisur Rahaman, 2) Sk. Taslim Arif @ Raja, 3) Malay Ghosh, 4) Dipak Chakraborty, 5) Nabarun Mishra, 6) Nisith Paul, 7) Mobarak Khan and 8) Md. Azim @ Pappu are produced from J.C.

Ld. Counsels for the accused persons and the Ld. Special P.P. are found present on call.

It is now 3:10 pm.

IO is found absent today and also did not furnish any report regarding his absence.

The Trial Monitoring Officer is present in Court today.

One Vakalatnama has been filed on behalf of the defacto complainant.

Let it be kept with the record.

Now, the matter is taken up for recording evidence in presence of all sides in camera.

C.S.W-55, Pritikana Panja Pal is examined in chief as P.W-51 by the Ld. Special PP on behalf of the prosecution side in part.

At this juncture, Ld. Special PP files a petition praying for declaring the witness P.W-51 namely, Pritikana Panja Pal as a hostile witness with a further prayer to allow the prosecution to cross-examine P.W-51 namely, Pritikana Panja Pal on the ground stated therein.

Heard Ld. Special P.P as well as Ld. Counsels for the accused persons.

Prayer for declaring the witness P.W-51 namely, Pritikana Panja Pal as a hostile witness is considered and allowed.

Prosecution is permitted to cross-examine witness P.W-51 namely, Pritikana Panja Pal.

P.W-51 namely, Pritikana Panja Pal is cross-examined by the Ld. Special P.P in full and thereafter she is cross-examined by the Ld. Counsels on behalf of the accused persons in full and then, she is discharged.

During the evidence, the signature of PW-51 on seizure list dated 09.11.2019 is proved and marked as Ext.P-14/1/PW-51.

As per Gazette Notification dated 15.07.2022, the certified true copy of the deposition of P.W-51 dated 12.03.2024 is handed over to both sides i.e. the prosecution side as well as the Ld. Defence Counsels after obtaining endorsement in the relevant register.

Now, the record is taken up for hearing of the bail application dated 11.03.2024 filed by the Ld. Defense Counsels on behalf of the accused Sk. Md. Anisur Rahman.

Ld. Advocate on behalf of the petitioner/accused person submits that the petitioner is moving the instant bail application for the first time after the bail application of the petitioner was rejected by the Hon'ble Division Bench of Calcutta High Court in CRM (DB) no. 3916 of 2023 on 29.01.2024.

Ld. Advocate on behalf of the petitioner/accused person further submits that the petitioner has complied with the order of Hon'ble Calcutta High Court and he neither wasted valuable time of this Court by taking unnecessary time for cross-examination during the trial nor did he ever pray for any adjournment of the case on any date.

Ld. Advocate on behalf of the petitioner/accused person further submits that the Hon'ble Calcutta High Court had categorically stated while passing the order that Trial Court and all stake holders must make all efforts to conclude the examination of 18 (eighteen) vulnerable witness by 30th April, 2024 but even on 11.03.2024 and today i.e. on 12.03.2024 two non-vulnerable prosecution witnesses i.e. PW-50 namely, Sk. Asgar Hossain and PW-51 namely, Pritikana Panja Pal have been examined and cross-examined in full instead of completing the examination of all the eighteen vulnerable witnesses at first as per the direction of the Hon'ble Court passed in CRM (DB) no. 3916 of 2023 on 29.01.2024.

Ld. Advocate on behalf of the petitioner/accused person further submits that from 30.01.2024 to 11.03.2024 prosecution has been able to examine only 12 vulnerable witnesses out of which 9 vulnerable witnesses have turned hostile before the Court and not supported the prosecution case.

Ld. Advocate on behalf of the petitioner/accused person further submits that the petitioner is in custody for more than 4 years and 4 months and long incarceration is causing mental harassment of the petitioner and the petitioner is fearing that the prosecution is intentionally delaying the process of examination of the vulnerable witnesses so that the petitioner remains in custody to face the custody trial.

Ld. Advocate on behalf of the petitioner/accused person further submits that the petitioner has filed this application before this Court though the Hon'ble Apex Court observed that he shall not be enlarged on bail till the conclusion of trial except by the Hon'ble High Court at Calcutta and the filing section of the Hon'ble Calcutta High Court is not accepting the bail application prayer without annexing any order passed by this Court and accordingly, this petitioner is filing this bail application with a prayer to pass necessary order.

In reply, Ld. Special P.P vehemently objected to the bail prayer of the accused person and submitted that there is no whisper in the order of the Hon'ble Court that other witnesses apart from vulnerable witnesses cannot be examined during trial and prosecution has already examined 13 vulnerable witnesses out of 18 vulnerable witnesses and only 5 vulnerable witnesses are yet to be examined and out of those 5 vulnerable witnesses 2 vulnerable witnesses were summoned earlier but they did not turn up before this Court for adducing evidence as they are out of station.

Ld. Special P.P further submitted that the Hon'ble Supreme Court passed the judgment on 17.03.2023 in Transfer Petition (Criminal) No. 409 of 2021 at Paragraph no.36 (viii) to the effect inter alia "*Respondent no.2 having regard to his criminal antecedents, as well as other accused who are in custody, shall not be enlarged on bail till the conclusion of trial save and except by the High Court.*"

Ld. Special P.P further submits that in view of the observation of the Hon'ble Apex Court there is no scope for this Court to pass any order regarding the bail prayer of the accused person namely, Sk. Md. Anisur Rahaman and considering the present circumstances, this Court

is having no jurisdiction to hear the bail petition filed by the Ld. Advocate for the petitioner/accused person and the same is frivolous in nature.

Ld. Special P.P further argues that only five vulnerable witnesses are remaining to be examined out of the 18 vulnerable witnesses and there is sufficient time for adducing of the evidence by the remaining five vulnerable witnesses before this Court and also submits that by 30.04.2024 all the vulnerable witnesses will be examined by the prosecution side and therefore, there is no scope of the defense side to agitate that the prosecution side has deliberately violated the order of the Hon'ble Court.

Heard both sides at length.

Perused the petition dated 11.03.2024 filed by the Ld. Defense Counsel and the materials on record and also considering the submissions of both sides and the fact that the trial of this case is proceeding on a day to day basis before this Court and in view of the direction of the Hon'ble Apex Court in Transfer petition (Criminal) 409 of 2021 and also the directions of the Hon'ble High Court passed in CRM (DB) no. 3916 of 2023 on 29.01.2024, the instant petition praying for bail of the accused person namely, Sk. Md. Anisur Rahaman before this Court is misconceived and the same is thus, rejected.

Thus, the petition dated 11.03.2024 praying for bail on behalf of accused Sk. Md. Anisur Rahaman filed by the Ld. Defense Counsel is, accordingly, disposed of.

It is now 5:10 pm.

No other witness is present today.

Ld. Special PP prays for issuance of summons upon CSW-68 for producing him before this Court tomorrow i.e. on 13.03.2024.

After completion of the evidence, Ld. Special P.P draws the attention of this Court that the IO is remaining absent during the trial for which inconvenience is being faced by him and prays for a direction upon the IO to remain present on each and every date of the evidence of this case from beginning of the trial and till completion of recording of evidence.

Heard Ld. Special PP.

IO is directed to remain present on each and every date of the evidence of this case from beginning of the trial and till completion of recording of evidence.

In view of the specific time line fixed by the Hon'ble Supreme Court of India in TRANSFER PETITION (CRIMINAL) NO. 409 of 2021, both sides are directed to be present before this Court at 1:30 pm tomorrow for proceeding with the trial of this case expeditiously.

Todate i.e. 13.03.2024 for production of the eight accused persons, examination of witness CSW-68 and examination of other CSWs before this Court including the vulnerable witnesses, if any.

Issue summons at once.

Requisite at once.

All the eight accused persons are remanded to J.C. till 13.03.2024.

Let a copy of this order be handed over to Ld. Special P.P for information.

Let a copy of this order be handed over to the IO for information and compliance.

D/C by me.

Sd/-

Chief Judge
City Sessions Court, Calcutta

Sd/-

Chief Judge
City Sessions Court, Calcutta