

Sessions Case No. 40 of 2012

Order No. 143 dated 10. 02. 2021 :-

Four accused persons, namely, Ratan Das @ Barka, Kalyan Hazra, Sahadeb Samanta and Saheb Das are produced from judicial custody and placed on dock.

The other accused person, namely, Hanif Sk. on AI bail is also present. An application is filed on behalf of accused Hanif Sk. for extension of his AI bail.

Witness, Prabir Krishna Seal (PW-24) is present on receipt of summons from the court.

All accused persons save and except accused Saheb Das is represented by their respective Ld. Advocates. The accused Saheb Das, who is in JC, states that Smt. Sarbani Roy is his Ld. Advocate, but he does not know where she is. The Ld. Advocate is not present in court in spite of repeated call. In fact, the accused person states that she was not present in court on the previous two dates as well. Consequently, this court is constrained to adjourn the evidence of the PW-24, who is himself evidently not in the best of health, in the interest of justice. The concerned accused person is directed to ensure that his Ld. Advocate remains present in court on the next date.

Three separate bail applications are then filed on behalf of accused Sahadeb Samanta, Ratan Das @ Barka and Kalyan Hazra. The Ld. Advocates on behalf of all there accused persons advanced the argument that the concerned accused persons have been in JC for years together and they have all prayed for bail on humanitarian grounds. They also invited the attention of the court towards the fact that the co-accused Md. Hanif Sk. is on bail and has not absconded, or otherwise even attempted to tamper with the evidence. It is said that present accused persons seeking bail are in fact in a better footing than the said Md. Hanif Sk. and accordingly, bail is prayed for on their behalf.

The Ld. Counsel for the prosecution raises objection against the prayer for bail, but ultimately leaves the matter upon the consideration of this court.

It is manifest from the record that accused Hanif Sk. was enlarged on bail on 09. 01. 2017 on the ground that the marriage of his elder daughter was to take place on 10. 01. 2017. In other words, bail was granted to accused Md. Hanif Sk. on humanitarian ground and he has admittedly not misused his liberty and absconded. The three accused persons have been in custody for the better part of 9 years and till date, only 23, out of the 46 witnesses, cited in the charge-sheet have been examined. While it is a settle proposition of law that prosecution is not bound to produce all witnesses mentioned in the charge-sheet, the Ld. Counsel for the prosecution graciously submits that a significant number of witnesses are yet to be examined on behalf of the prosecution. It is manifest on scrutiny of the record that the deposition of PW-23 was concluded on 27. 06. 2019 and no witness has been examined by the prosecution in the last year and half. The PW-24, whose deposition has only started appears to be ill himself and substantial time will probably be require to conclude his own testimony. The Ld. Counsel for the respective accused persons submit medical documents of family members of the said accused persons and have prayed for bail on humanitarian ground.

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***Hon'ble Apex Court in State of Rajasthan Vs. Balchand @ Baliya, AIR 1977 SC 2447***, propounded that ***“bail is a rule, jail is an exception”***. ***The Supreme Court in Superintendent & Remembrance of Legal Affairs***, expounded that ***“The law of bails, has to dovetail to conflicting demands, namely, on the one hand, the requirements of society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. The presumption of innocence of an accused till he is found guilty”***.

While granting bail under Section 439 of the CrPC, the court takes into consideration the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witness and obstructing the course of justice. Having said that, each case presents its own peculiar factual metrix and therefore, grounds peculiar to a particular case has to be taken into account by the court. Detention of an individual infringes his right to life and personal liberty guaranteed under Article 21 of the Indian Constitution. The main purpose of detention is to ensure presence of the accused for trial without any inconvenience. Therefore, this court has to consider at this juncture whether detention of the three accused persons seeking bail have ensured that the trial has concluded in an expeditious manner or whether there is a possibility of the trial being concluded in the near future, as well as whether the accused persons are likely to abscond and tamper with the evidence, if they are enlarged on bail.

It is needless to mention herein that even detention of the accused persons for long periods have not ensured speedy conclusion of the trial and this court opines that the trial is also not likely to be concluded in the near future. Further, one of the co-accused has already been enlarged on bail on humanitarian ground and the case record demonstrate that he did not misuse his liberty. Neither is there any complaint on the part of the prosecution alleging that the said accused person has threaten or attempted to threaten any witness or otherwise tamper with the evidence.

It find it relevant to mention herein that all accused persons are permanent residence of the State of West Bengal and the likelihood of then being apprehended, in future, in the event of any mis-demeanour is far greater than what would have been the case, had they been permanent residence outside the State. I also find it worthwhile to mention herein that the family members of all three accused persons, as appears from the medical documents filed by them, are suffering from various ailments and in this positions and the presence of the accused persons would definitely ensure their well beings.

Therefore, regard being had to be submission of the Ld. Counsel for the three accused persons as well as the prosecution, together with a close scrutiny of the case docket and the medical documents submitted on behalf of the accused persons, this court is inclined to allow the bail prayers of the accused persons.

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Accordingly, the prayer for bail of accused Sahadeb Samanta, Ratan Das @ Barka and Kalyan Hazra is considered and allowed.

The aforementioned accused persons may find **AI bail of Rs.10,000/-, (Rupee Ten Thousand) with two sureties (one Registered Surety of Rs.5000/- and one Local Surety of Rs.5000/-)**, subject to the satisfaction of Ld. ACMM, Calcutta, subject to the condition that they shall not leave the jurisdiction of this court until further order and shall meet the local PS once in a fortnight, with further condition that they shall not tamper with the evidence or threaten any witness.

Fixing: 08. 03. 2021 for production, appearance and evidence.

Accused persons are as before.

Dictated & corrected by me.

Addl. Dist. & Sessions Judge  
1<sup>st</sup> Fast Track Court, Calcutta.  
10. 02. 2021

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1<sup>st</sup> Fast Track Court, Calcutta  
10. 02. 2021

No. \_\_\_\_\_.

Dated: 10. 02. 2021.

Copy forwarded for information and taking necessary action to :-

Ld. ACMM, Calcutta.

Addl. Dist. & Sessions Judge,  
1<sup>st</sup> Fast Track Court, Calcutta.  
10. 02. 2021.