

GR-1063/2022**Order dated 10.04.2023**

The accused no. 1 Jayanta Polley, accused no. 2 Goutam Banerjee, accused no. 3 Sourav Agarwal, accused no. 4 Mahesh Fogla, accused no. 5 Santosh Rajak and accused no. 7 Pawan Kumar Sharma are produced today from Judicial custody.

The accused no. 6 Monideepa Banerjee on court bail is present.

Bail petition is filed for accused nos. 1, 3, 4 and 5 u/s 437 (6) of Cr. P. C as 60 days has expired from the first day of evidence.

Bail petition is also filed for accused no. 7 Pawan Kumar Sharma on the ground of his illness.

Heard the submission of Ld. Advocates for the above mentioned accused persons as well as Ld. APP.

The Ld. Advocates for the accused nos. 1, 3, 4 and 5 submitted that the evidence could not be completed within 60 days and for that reason and also considering the detention period the accused should be enlarged on bail.

Ld. APP raised strong objection and according to him total 7 witnesses have been examined and there is no latches on the part of the prosecution who are always ready to proceed with the trial and according to him the accused should not be enlarged on bail as custody trial is required.

Perused the case record as well as the CD.

Considered.

It has to be noted that the accused no. 7 Pawan Kumar Sharma is not on the same footing with the other charge sheeted accused persons as he was absconding and produced on 13.03.23 on the strength of warrant of arrest issued against him and thereafter supplementary charge sheet was submitted against him on 28.03.23 and the trial against him has not yet commenced.

On the other hand, the trial against the accused nos. 1 to 6 commenced on 18.01.23 with the framing of charge u/s 120B/419/420/466/467/468/471/474 of Indian Penal Code and the first date of recording evidence was on 01.02.23 and thereafter total 7 prosecution witnesses were examined and when this trial was going on the accused person no. 7 Pawan Kumar Sharma got arrested and produced and after that the trial got halted.

Now the first question is whether on expiry of more than 60 days from the first date of evidence whether in this case the accused persons should be enlarged on bail u/s 437 (6) of Cr.P.C or not.

It is the considered view of this court on perusing the provision of section 437(6) of Cr. P. C that although the legislators have used the term “**shall**” but going by the entire provision it remains clear that the provision is not mandatory but discretionary and the bail prayer if refused should be supported by reason. This view is supported by the Hon’ble Delhi High Court as well as by the Hon’ble Mumbai High Court. The *Hon’ble Delhi High Court in the case of Robert Lendi Vs. The Collector of Customs & Others 1987 Cri LJ 55* it has been clearly stated that there are no fetters placed on the exercise of discretion while dealing with application u/s 437(6) of Cr. P. C. It is to be mentioned that the Ld. Advocates for the accused referred to the case of *Chandra Swami and another Vs. CBI, ordered on 7th November 1996* by the Hon’ble Apex Court as bail was granted to the accused persons in that case. But, that case is not at all applicable in this case as in the body of

the judgement the Hon'ble Supreme Court made it clear that they did not go into the interpretation or applicability of section 437(6) of Cr. P. C in that case.

Now, on hearing both the sides and on consideration of the case record and the CD I am of the considered view that bail prayer of accused nos. 1, 3, 4 and 5 should be refused even at this stage for the following reasons :

1. While considering and application u/s 437(6) of Cr. P. C it is open for this court to keep in mind other points of consideration which includes gravity of the offence. Like previous orders in this order also I reiterate that the offence is very serious in nature which directly affects administration of justice. It is to be noted that the instant case has been recorded on the basis of a solemn order of Hon'ble Mr. Justice Md. Nizamuddin of Hon'ble Calcutta High Court, dt. 12.09.22 in connection with 4 (four) writ petitions and on the basis of a subsequent inquiry report. The accusation is that the accused persons have hatched up a criminal conspiracy with each other and in pursuance thereof filed several writ petitions before the Hon'ble Calcutta High Court by virtue of fake power of attorney manufactured by them, by forging the signatures of the petitioners without their knowledge consent the authorization.

2. Charge has already been framed against the accused persons and already seven witnesses have been examined. The trial has now come to a pause due to arrest of one of the absconding accused person and charge will also be framed against him on the next date. I do not find any latches on the part of the prosecution during trial.

3. During trial the accused nos. 3 and 4 prayed for bail u/s 439 of Cr. P. C before the Hon'ble Court but the Hon'ble Court was pleased to observe the following :

“ In view of the daring nature of offence committed by the petitioners and as dates have been fixed for recording evidence, we are not inclined to grant bail to the petitioners at this stage. Accordingly, the bail prayer is rejected”.

4. Moreover, in this case which has been initiated on the basis of an order of the Hon'ble Calcutta High Court in a writ petition in which in the order dt. 12.12.22 the Hon'ble Court held the following:

“ This Court expects that both the aforesaid authorities will monitor the investigation of this case of serious nature involving defrauding the State revenue and this High Court and shall see that stern actions are taken against those who are involved in such a serious crime so that it becomes a precedent in future and message goes to the society against the culprits comprising of businessmen, chartered accountants, advocates”.

Thus, in such a case where the Hon'ble Court had repeatedly highlighted about the gravity of the offence I do not think enlargement of the accused u/s 437(6) of Cr. P. C will be proper at this stage when the trial has already commenced and the prosecution is also cooperating. There are many witnesses in this case and it will take time and in the considered view of this court enlargement of the accused would definitely affect the trial as chance of abscondance as well as influencing the witnesses cannot be ruled out . Hence ordered, that the bail petitions filed u/s 437(6) of Cr. P. C accused nos. 1, 3, 4 and 5 are considered and rejected.

Like last occasion the accused no. 7 Pawan Kumar Sharma has also moved his bail prayer today but applying the triple test method I do not find any justification to grant this accused bail at this stage who was absconding for long and has a vital role to play in the commission of offence. Thus, considering the gravity of the offence, chance of abscondance and chance of influencing the witnesses I

find necessity of detaining this accused further in custody and I am inclined to issue proper direction to the Correctional Home Authority to make arrangement for his treatment. Hence ordered, that the bail prayer of the accused no. 7 Pawan Kumar Sharma is considered and rejected and he is remanded to J/C till 13.04.23. Copies of prosecution documents duly been served upon this accused today.

Fix – 13.04.23 for production of accused persons nos. 1 to 5 and 7 and for appearance of accused no. 6 for framing of charge against accused no. 7 who has to be tried with the rest accused persons.

The Superintendent, Presidency Correctional Home is directed to make proper arrangement for the treatment of accused no. 7 Pawan Kumar Sharma.

D/C

Chief Metropolitan Magistrate
Calcutta.

GR-1202/2022**Order dated 18.02.2023**

Today stands fixed for E/R of W/A against the absconding accused nos. 5 to 13.

No E/R of W/A has returned.

Today also fixed for appearance of accused no. 1 to 4 who were enlarged on A.I bail by this court. Out of them the accused no. 2 Rohit Pandey and accused no. 3 Arvind Kumar Pandey appears and prays for confirmation of their bail.

The Ld. Advocates for accused no. 1 Sailesh Pandey and accused no. 4 Prasenjit Das submits that these accused persons have been taken into custody in the E.D case connection after grant of bail in this case. The Prosecution has filed a petition today for cancellation of interim bail granted to accused no. 1 Sailesh Pandey and accused no. 4 Prasenjit Das on the ground that the Ld. Advocates while moving the bail petitions for the accused nos. 1 and 4 suppressed before this court their undertaking given before the Hon'ble Calcutta High Court in C.R.R 263 of 2023 that during the pendency of that revisional application they would not file any bail application before this court. According to the Ld. APP they not only suppressed the said fact to this court but they have violated the undertaking also and in such circumstances the bail granted to these accused persons is liable to be rejected. In support of his contention another case of Hon'ble Calcutta High Court being ***Md. Sheru @ Sk. Javed Vs. Unknown*** decided in 16th July 2018.

The Ld. Advocates appearing for accused nos. 1 and 4 have filed petition and fairly submitted that a mistake has been committed by them due to some misunderstanding of the order of the Hon'ble High Court, Calcutta and prayed for unconditional apology and also submitted that necessary order may be passed in respect of accused nos. 1 and 4 who are already in custody in connection with ML Case No. 01 of 2023.

I have carefully perused the order of the Hon'ble Calcutta High Court in C.R.R 263 of 2023 passed by the Hon'ble Justice Tirthankar Ghosh and on perusal of the order sheet I am highly disappointed to see the conduct of the Advocates for the said accused persons in this court at the time of bail hearing. They specifically stated to this court that these accused should be enlarged on bail as there is no chance of immediate commencement of trial which was agreed by the prosecution but at the same time they also submitted that there is no legal impediment in grant of bail by this court as there is no such matter pending before any higher court but they have totally suppressed about the existence of such revisional application or about their undertaking given before the Hon'ble Calcutta High Court, which is a temple of justice to us. This does not seem like a benign mistake but it seems like a practice of fraud upon this court as well as upon the Hon'ble Calcutta High Court. I am totally shocked to find that two of the Advocates in this case as well as in that case before the Hon'ble Calcutta High Court are same who are Mr. Jakir Hossain and Mr. Md. Maqsood Alam and in such circumstances, I can come to one and only finding that the bail petition for accused Sailesh Pandey and accused Prasenjit Das were moved

with deliberate suppression of facts and the A.I bail granted to these two accused persons is not at all sustainable anymore in the eye of law after detection of this suppression of fact.*****

before this court accused persons

Bail prayer is made for him.

Heard the submission of the Ld. Advocates for the accused person who submits that the investigation is completed in respect of this accused no. 2 and charge sheet has been submitted disclosing offences triable by Magistrate, as such the accused person should be enlarged on bail. He also submits that the accused person is an Advocate by profession with experience of 30 years and he had filed the writ petitions before the Hon'ble Court in good faith and he has no active involvement in commission of the offence.

Ld. APP raises strong objection and according to him further investigation is going on and the nature of the offence is such which does not justify enlargement of the accused person on bail at this stage. The Ld. APP also points out that the offence is very serious in nature which directly affects administration of justice and the investigation is going on under the monitoring of the Hon'ble Calcutta High Court and those Writ petitions are still pending.

Perused the case record as well as the CD.

Considered.

It appears that charge sheet has been submitted on 17.12.22 against this accused and investigation against this accused seems to be complete but that does not give any right to the accused to be enlarged on bail. In this case, apart from the triple test, the nature of the offence has to be considered. From the charge sheet filed by the Anti Fraud Section of Detective Department, Lalbazar, it is prima facie evident that the alleged offences have not been committed by a single hand but it is the evil outcome of a criminal conspiracy between the accused persons.

The instant case was recorded on the basis of a solemn order of Hon'ble Mr. Justice Md. Nizamuddin of Hon'ble Calcutta High Court dated 12.09.2022 in connection with four Writ Petitions and on the basis of a subsequent inquiry report of Soumitra Das, Sub Inspector of Hare Street PS.

Among the four writ petitions, the matter under WPA 16929/2022 is being investigated by CID, West Bengal and the matter of the rest three writ petitions are being investigated in the instant case. The allegation is that the accused persons have hatched up a criminal conspiracy with each other and in pursuance thereof filed several writ petitions before the Hon'ble Calcutta High Court by virtue of fake power of attorney manufactured by them, by forging the signatures of petitioners without their knowledge, consent and authorization.

As per the charge sheet, three fake companies in the name and style M/s Akshat Enterprises, M/s Astangik Trading Company and M/s Pradhan Enterprises were created with dishonest intention to earn input goods and services tax credit by using forged invoices and other documents.

It has also been mentioned in the charge sheet that one Devki Nandan Baberwal @ Sharma known as Panditji of Rajasthan created different companies in pursuance of the conspiracy with accused no. 4 Mahesh Fogla and accused no. 3 Sourav Agarwal. In the charge sheet the accused nos. 3 and 4 have also been depicted as the main think tank behind the offence.

According to the charge sheet, the accused nos. 3, 4 and 5 hatched up a criminal conspiracy with Advocate accused no. 2 and accused no. 1 Jayanta Polley to file the said writ petitions before the Hon'ble Court in fictitious names and they manufactured fake and fabricated documents for using in those writ petitions. Thus, prima facie the involvement of this accused is evident from the record.

The Ld. Advocate for the accused submitted that the Hon'ble Supreme Court had repeatedly reminded us that basic rule behind bail jurisprudence is "to bail not jail" but if we keep in mind the maximum punishment prescribed for the alleged offences and the very serious nature of the offence which directly affects the administration of justice and revenue of the state, the detention of this accused person in custody seems justified even at this stage.

The Ld. Advocate also produced a certified copy of an order of Ld. C.J.M, Howrah in Howrah P.S case no. 398/ 2022, which relates to one writ petition out of four and the Ld. Advocate submitted that this accused no. 2 as well as accused no. 1 Jayanta Polley were enlarged on bail on 23.12.22 by the Ld. C.J.M, Howrah after submission of charge sheet in that case and in this case also they should be enlarged on bail. In this context I would just say that the said order is not binding upon me and I do not find any reason as to why the accused persons were enlarged on bail in a similar kind of case with such serious allegation.

Now before concluding, I must point out to the observation of the Hon'ble Calcutta High Court in the last order dt. 12.12.22 in the four writ petitions which goes as follows : "***This Court expects that both the aforesaid authorities will monitor the investigation of this case of serious nature involving defrauding the state revenue and this High Court and shall see that stern actions are taken against those who are involved in such a serious crime so that it becomes a precedent in future and message goes to the society against the culprits comprising of businessmen, chartered accountants, advocates***".

It is true that the aforesaid expectation of the Hon'ble Court is from the Commissioner of Police Kolkata and SSP, (H Q S), CID, West Bengal but the message is very clear and going by the spirit of that order, and in the light of the above observation, I am inclined to reject the bail prayer of charge sheeted accused no. 2 at this stage and he is remanded to J/C till 09.01.23.

Todate for production and service of copies.

D/C

Chief Metropolitan Magistrate
Calcutta.

GR-1063/2022**Order dated 27.12.2022**

Today the accused no.2 Goutam Banerjee is produced from custody.

Bail prayer is made for him.

Heard the submission of the Ld. Advocates for the accused person who submits that the investigation is completed in respect of this accused no. 2 and charge sheet has been submitted disclosing offences triable by Magistrate, as such the accused person should be enlarged on bail. He also submits that the accused person is an Advocate by profession with experience of 30 years and he had filed the writ petitions before the Hon'ble Court in good faith and he has no active involvement in commission of the offence.

Ld. APP raises strong objection and according to him further investigation is going on and the nature of the offence is such which does not justify enlargement of the accused person on bail at this stage. The Ld. APP also points out that the offence is very serious in nature which directly affects administration of justice and the investigation is going on under the monitoring of the Hon'ble Calcutta High Court and those Writ petitions are still pending.

Perused the case record as well as the CD.

Considered.

It appears that charge sheet has been submitted on 17.12.22 against this accused and investigation against this accused seems to be complete but that does not give any right to the accused to be enlarged on bail. In this case, apart from the triple test, the nature of the offence has to be considered. From the charge sheet filed by the Anti Fraud Section of Detective Department, Lalbazar, it is prima facie evident that the alleged offences have not been committed by a single hand but it is the evil outcome of a criminal conspiracy between the accused persons.

The instant case was recorded on the basis of a solemn order of Hon'ble Mr. Justice Md. Nizamuddin of Hon'ble Calcutta High Court dated 12.09.2022 in connection with four Writ Petitions and on the basis of a subsequent inquiry report of Soumitra Das, Sub Inspector of Hare Street PS.

Among the four writ petitions, the matter under WPA 16929/2022 is being investigated by CID, West Bengal and the matter of the rest three writ petitions are being investigated in the instant case. The allegation is that the accused persons have hatched up a criminal conspiracy with each other and in pursuance thereof filed several writ petitions before the Hon'ble Calcutta High Court by virtue of fake power of attorney manufactured by them, by forging the signatures of petitioners without their knowledge, consent and authorization.

As per the charge sheet, three fake companies in the name and style M/s Akshat Enterprises, M/s Astangik Trading Company and M/s Pradhan Enterprises were created with dishonest intention to earn input goods and services tax credit by using forged invoices and other documents.

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It has also been mentioned in the charge sheet that one Devki Nandan Baberwal @ Sharma known as Panditji of Rajasthan created different companies in pursuance of the conspiracy with accused no. 4 Mahesh Fogla and accused no. 3 Sourav Agarwal. In the charge sheet the accused nos. 3 and 4 have also been depicted as the main think tank behind the offence.

According to the charge sheet, the accused nos. 3, 4 and 5 hatched up a criminal conspiracy with Advocate accused no. 2 and accused no. 1 Jayanta Polley to file the said writ petitions before the Hon’ble Court in fictitious names and they manufactured fake and fabricated documents for using in those writ petitions. Thus, prima facie the involvement of this accused is evident from the record.

The Ld. Advocate for the accused submitted that the Hon’ble Supreme Court had repeatedly reminded us that basic rule behind bail jurisprudence is “to bail not jail” but if we keep in mind the maximum punishment prescribed for the alleged offences and the very serious nature of the offence which directly affects the administration of justice and revenue of the state, the detention of this accused person in custody seems justified even at this stage.

The Ld. Advocate also produced a certified copy of an order of Ld. C.J.M, Howrah in Howrah P.S case no. 398/ 2022, which relates to one writ petition out of four and the Ld. Advocate submitted that this accused no. 2 as well as accused no. 1 Jayanta Polley were enlarged on bail on 23.12.22 by the Ld. C.J.M, Howrah after submission of charge sheet in that case and in this case also they should be enlarged on bail. In this context I would just say that the said order is not binding upon me and I do not find any reason as to why the accused persons were enlarged on bail in a similar kind of case with such serious allegation.

Now before concluding, I must point out to the observation of the Hon’ble Calcutta High Court in the last order dt. 12.12.22 in the four writ petitions which goes as follows : “ ***This Court expects that both the aforesaid authorities will monitor the investigation of this case of serious nature involving defrauding the state revenue and this High Court and shall see that stern actions are taken against those who are involved in such a serious crime so that it becomes a precedent in future and message goes to the society against the culprits comprising of businessmen, chartered accountants, advocates***”.

It is true that the aforesaid expectation of the Hon’ble Court is from the Commissioner of Police Kolkata and SSP, (H Q S), CID, West Bengal but the message is very clear and going by the spirit of that order, and in the light of the above observation, I am inclined to reject the bail prayer of charge sheeted accused no. 2 at this stage and he is remanded to J/C till 09.01.23.

Todate for production and service of copies.

D/C

Chief Metropolitan Magistrate
Calcutta.

GR-1063/2022

Order dated 26.12.2022

Today the accused no.1, Jayanta Polley, accused no.3 Sourav Agarwal, accused no.4 Mahesh Fogla and accused no.5 Santosh Rajak are produced from custody.

Bail petitions are filed for all excepting Santosh Rajak.

Heard the submission of the Ld. Advocates for the accused persons who submits that the investigation is completed and charge sheet has been submitted disclosing offences triable by Magistrate, as such the accused persons should be enlarged on bail.

Ld. APP raises strong objection and according to him further investigation is going on and the nature of the offence is such which does not justify enlargement of the accused persons on bail at this stage. The Ld. APP also points out a special investigation team (SIT) is investigating into this case under the monitoring of the Hon'ble Calcutta High Court and those Writ petitions are still pending.

Perused the case record as well as the CD.

Considered.

It appears that the investigation is almost completed but it cannot be said that the investigation is fully complete as the prayer of the investigating officer u/s 173 (8) of Cr.P.C has been allowed by this Court. In this case, apart from the triple test, the nature of the offence has to be considered. From the charge sheet filed by the Anti Fraud Section of Detective Department, Lalbazar, it is prima facie evident that the alleged offences have not been committed by a single hand but it is the evil outcome of a criminal conspiracy between the accused persons.

The instant case was recorded on the basis of a solemn order of Hon'ble Mr. Justice Md. Nizamuddin of Hon'ble Calcutta High Court dated 12.09.2022 in connection with four Writ Petitions and on the basis of a subsequent inquiry report of Soumitra Das, Sub Inspector of Hare Street PS.

Among the four writ petitions, the matter under WPA 16929/2022 is being investigated by CID, West Bengal and the matter of the rest three writ petitions are being investigated in the instant case. The allegation is that the accused persons have hatched up a criminal conspiracy with each other and in pursuance thereof filed several writ petitions before the Hon'ble Calcutta High Court by virtue of fake power of attorney manufactured by them, by forging the signatures of petitioners without their knowledge, consent and authorization.

As per the charge sheet, three fake companies in the name and style M/s Akshat Enterprises, M/s Astangik Trading Company and M/s Pradhan Enterprises were created with dishonest intention to earn input goods and services tax credit by using forged invoices and other documents.

It has also been mentioned in the charge sheet that one Devki Nandan Baberwal @ Sharma known as Panditji of Rajasthan created different companies in pursuance of the conspiracy with accused no. 4 Mahesh Fogla and accused no. 3 Sourav Agarwal. In the charge sheet the accused nos. 3 and 4 have also been depicted as the main think tank behind the offence.

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According to the charge sheet, as per the conspiracy and on the instruction of Mahesh Fogla and Sourav Agarwal the accused Advocate Goutam Banerjee filed the writ petition before the Hon'ble High Court, Calcutta on the basis of forged documents and the accused no. 1 Jayanta Polley forged some signatures on the writ petition. Thus, all the accused persons have played their respective roles in commission of the offence and that has come up from the evidence collected by the police during investigation. Now, at this stage when further investigation is going on under the monitoring of the Hon'ble Calcutta High Court, enlargement of these accused persons is not at all warranted. One might argue that the Hon'ble Supreme Court has repeatedly reminded us that basic rule behind bail jurisprudence is "to bail not jail" and the documents have already been seized and there is no chance tampering of evidence but if we keep in mind the maximum punishment prescribed for the alleged offences and the very serious nature of the offence which directly affects the administration of justice and revenue of the state, the detention of these accused persons in custody seems justified even at this stage.

Before concluding I must point out that the observation of the Hon'ble Calcutta High Court in the last order dt. 12.12.22 in the four writ petitions that which goes as follows : "***This Court expects that both the aforesaid authorities will monitor the investigation of this case of serious nature involving defrauding the state revenue and this High Court and shall see that stern actions are taken against those who are involved in such a serious***

crime so that it becomes a precedent in future and message goes to the society against the culprits comprising of businessmen, chartered accountants, advocates”.

It is true that the aforesaid expectation of the Hon'ble Court is from the Commissioner of Police Kolkata and SSP, (H Q S), CID, West Bengal but the message is very clear and going by the spirit of that order, and in the light of the above observation, I am inclined to reject the bail petitions of accused nos. 1, 3 and 4 and the accused nos. 1, 3 to 5 are remanded to J/C till 09.01.23.

Todate for production and service of copies.

D/C

Chief Metropolitan Magistrate
Calcutta.