

**Order dated 28.04.2023**

As fixed, the case record is taken up for hearing the bail application u/s 437 of Cr. P. C filed by accused no. 2 Goutam Banerjee.

Heard the Ld. Advocate for the accused who submits that according to him this accused no. 2 Goutam Banerjee is entirely on a separate footing from the other accused persons whose bail application u/s 437(6) of Cr. P. C was rejected on 10.04.23. According to him this accused person is a Senior Advocate and allegedly he had just drafted the petitions and e-mailed those from his Chamber and that cannot be an offence in the eye of law. According to the Ld. Advocate on the last occasion this court had rejected the bail application of the rest of the accused persons on the ground of the gravity of the offence but he begs to differ from that view as according to him the offence alleged in this case cannot be viewed as a grave offence as this is not an economic offence nor is a case of NDPS Act (Page-5 of notes of argument). He also submits that in the case of this accused there is no chance of absconsion and it is also not proper to think that a Senior Advocate will influence the witnesses, as such this accused should enlarge on bail considering the merit of the case as well as on the ground of expiry more than 60 days from the first date of recording evidence and considering his detention since 21.11.22 and the completion of trial will take time.

The Ld. APP raised objection and according to him the trial will be hampered if this accused is enlarged on bail.

It is also pertinent to mention here after completion of submission the Ld. Advocate has submitted a notes on argument on his bail petition and cited the following case laws :

1. Md. Muslim Vs. State, Manu/SC/0320/2023.
2. Saurabh Pandey Vs. Union of India, Manu/UP/1658/2022
3. Laishram Suresh & Others Vs. The State of Manipur, Manu/MN/0069/2022
4. Dilip Yadav Vs. State of M.P, Manu/MP/0085/2021

I have carefully perused and considered the notes of argument and the view of this court on hearing both the sides are as follows :

1. The Ld. Advocate for the petitioner tried to project this case as a simpliciter case of cheating and forgery totally ignoring the fact that the alleged offence directly affects administration of justice and that has been detected by the Calcutta High Court. Moreover, charge is framed u/s 120B/419/420/466/467/468/471/474 of IPC and the maximum punishment for offence u/s 467 and 474 extends to imprisonment for life and when there is such punishment the offence is definitely grave. In this context, I also remind myself that the instant case has been initiated on the basis of an order of the Hon'ble Calcutta High Court in a writ petition in which 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.”***

2. Not only that the Ld. Advocate for the accused had totally ignored the conspiracy part of this case. It has been time and again mentioned by the Hon'ble Court in the pending writ petition by which the investigation is being monitored that for commission of this offence people from different walks of life like Chartered Accountant, Businessman, Lawyer etc. The very prosecution case 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. This case is like a beaded chain where each and every participants have their respective roles to play and at this stage when trial is going on I am not inclined to discuss much about the role played by this accused person but allegedly he is one of the beads of that beaded chain.

3. In the light of the point no. 2, I am not inclined to accept the argument that this accused is on a different pedestal from the others who prayed for bail on 10.04.23 which I had to reject after recording reasons. I am of the considered view that he may be an Advocate but that does not put him in a better footing than the other accused persons who are also charged with same sections as that of this accused.

4. Now after discussing on merit of the case the main question is whether this accused is entitled to bail u/s 437(6) of Cr. P. C. The Ld. Advocate has the full right to criticize my order dt. 10.04.23 but I have no other option but to treat this accused at par with them and I will stick to the same stand taken on 10.04.23 and I am of the considered view that this accused is also not to be enlarged on bail u/s 437(6) of Cr. P. C for the following reasons :

a) While considering an 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. I have already discussed about the gravity of the offence above.

b) Charge has already been framed even against the accused subsequently arrested and we have even resumed evidence but could not fix the matter for day to day hearing u/s 309 of Cr. P. C to accommodate the multiple lawyers of the accused persons who are praying for dates according to their convenience.

c) 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 petitioner 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.”***

It is true that this accused had not moved before the Hon'ble Court at that point of time but as I pointed out that he is also one of the beads in the same chain, the finding of the Hon'ble Court is bound to affect this accused also.

d) It is true that the accused has permanent home and hearth in Kolkata but the chance of influencing the witnesses cannot be ruled out. The result of triple test is not going in his favour. It is also to be reiterated like the order of 10.04.23 that the provision of section 437(6) of Cr. P. C is not

mandatory but discretionary and the discretion has to be applied considering all the relevant circumstances as aforesaid.

In the light of above discussion I do not think further discussion is required on the notes of argument as well as the case laws referred by the Ld. Advocate as I believe I have covered all the points highlighted in those judgments and very objective of this court is to do speedy trial which has already commenced and with cooperation of the Ld. Advocates for the accused persons can be further expedited.

Hence it is ordered, that the bail petition is considered and rejected.

To date for evidence.

D/C

CMM