

ST(P) 09 (08) 2023
Special (P.O.C.S.O.) 11 / 2023
(C.N.R. - WBHG05-000563-2023)
Present: NAYYAR AZAM KHAN
Judge, Special Court-cum,
ADDITIONAL SESSIONS JUDGE, FIRST COURT,
SERAMPORE, HOOGHLY
(IN-CHARGE)
(J.O. Code - WB01302)

Order No. 28 dtd. 09.12.2025

Today is fixed for hearing of the bail petition dated 02.12.25 filed on behalf of the accused person namely Saddam Hossain @ Saddam Hossain Mallick in this case.

Ld. P.P. In-Charge and defence counsel are present before this court. It is verified from the record that the notice of this bail petition has been served upon the defacto complainant of this case. The record is now taken up for hearing of the said bail petition.

Ld. Advocate for the petitioner, while moving the said bail petition submitted that although the bail petition of this accused person Saddam Hossain @ Saddam Hossain Mallick has been dismissed by the Hon'ble Calcutta High Court in CRM (DB) 2829 of 2024 on 30.9.2024, he is pressing the said bail prayer of this accused person in this case to draw the attention of this court to the fact that the fundamental right of speedy trial of this accused petitioner which is one of the facets of Article 21 of the Indian Constitution is being curtailed as after the said dismissal of the bail prayer in which it was directed to complete the trial of this case within eight months from the date next fixed for recording evidence, the trial of this case is yet to be completed although a period of eight months from the next date of 14.11.2024 has already elapsed. He drew the attention of this court to the judgement passed by the Hon'ble Supreme Court of India in *Sheikh Javed Iqbal @ Ashraf Ansari Vs The State of Uttar Pradesh* in this regard after mentioning that the accused petitioner is in custody since 16.4.2023 and that the accused petitioner's fundamental rights ensured under Article 21 of Constitution of India is being curtailed day after day due to long incarceration. He also submitted that the grounds of arrest at the time of the arrest of the petitioner was not communicated to him which violates Article 22(1) of the Constitution, making the arrest illegal, which is against the mandate of the Hon'ble Supreme Court of India propounded in its judgement of *Vihaan Kumar Vs The State of Haryana* which further necessitates the enlargement of the petitioner on bail. Ld Advocate for the accused petitioner prayed for bail of the accused petitioner under any terms and conditions after considering the detention period, and the violations of Article 21 and Article 22 of Constitution of India.

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Ld Advocate for the State raised strong objection to the submissions of the ld defence counsel and submitted that the State is making all endeavours for early completion of the trial of this case and that the State has not sought any adjournment in the trial after the passing of the order of the Hon'ble Court. He also submitted that the Vihaan Kumar Judgement by the Hon'ble Supreme Court was passed much after the arrest of the present petitioner in this case and that the said judgement does not say that it is retrospective in operation.

Heard both the sides. Perused the bail petition, record and materials in the CD. Considered.

It is apparent from the careful scanning of the instant record that the submission of the ld defence counsel on curtailment of the right of the accused petitioner to speedy trial by the prosecution is not found proper as the prosecution has been able to produce 17 witnesses to depose in this case on the dates fixed after the direction of the Hon'ble High Court Calcutta on 30.9.2024 which shows that this court has tried to expedite the trial of this case to the fullest extent possible. However, it is apparent from the record that out of 34 charge sheeted witnesses, only 24 witnesses have deposed so far in this case which indicates that early conclusion of trial in this case may not be possible. The arrest memo of the accused petitioner found in the instant record shows that no member of his/her family nor any respectable person of the locality was informed about his arrest at the time of his arrest as the relevant entry in the arrest memo relating to the signature of such witness is found blank, which shows that the arrest is illegal. The record as well as the CD shows no trace that the ground of arrest was communicated to the accused person at the time of his arrest thus showing the infringement of Article 22(1) of the Indian Constitution and section 50(1) of the Cr.P.C. further making the arrest illegal in this case as per the observations of the Hon'ble Supreme Court of India in the landmark case of *Pankaj Bansal Vs Union of India* and re-iterated in *Vihaan Kumar Vs The State of Haryana*. This court is not in consonance with the view of the ld defence counsel that the above judgement is prospective in nature but is of the view that the principle propounded therein relating to the compliance of intimating the ground of arrest is sacrosanct in nature whenever any arrest is affected, which has not been done so in the present case. Accused petitioner is in custody for two years eight months.

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There is nothing in the CD which reveals that the accused petitioner is a history sheeter or is a flight risk.

Considering the above facts and circumstances, I am inclined to allow the prayer for bail of all the accused petitioner at this stage. Hence, prayer for bail of the petitioner is allowed.

Accordingly, the petitioner namely Saddam Hossain @ Saddam Hossain Mallick, may be enlarged bail on furnishing bond of Rs.20,000/- with two sureties of Rs.10,000/- each, **out of which one must be a local surety**, subject to the satisfaction of the Ld. A.C.J.M., Serampore, on condition that he/she shall not remain absent before this court on any date fixed without any justifiable cause. Further, the accused petitioner must not leave the jurisdiction of this court on any day, until the completion of the trial in this case without leave of this court and must mark his attendance before the I.O. of this case once every week until further order. The instant bail prayer is thus disposed of.

Let a copy of this order be sent to the Ld. A.C.J.M., Serampore for information and taking necessary action.

Let a soft copy of this order be sent to the Superintendent of concerned Correctional Home for due intimation of his/her bail to the respective petitioners

To date for production/appearance, if on bail and evidence as per schedule fixed. Summon be issued if not done.

D/C by me.

SD/- Nayyar Azam Khan.
Judge, Special Court-cum-
Additional Sessions Judge,
1st Court, Serampore,
(In-Charge)

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