

**CNR No: WBSP010053982024**  
Present: Subhra Som Ghosal  
J.O Code: WB00984  
**Sessions Case No: 38 (04) of 2024**

**Order No. 04, dated: 04-06-2024.**

The accused person, namely Pronoy Roy @ Pupai has been produced from J/C.

From the case record it has transpired that the accused person preferred the bail petition before the Learned District Judge, South 24 parganas on 07-05-2024 and pending the hearing of the bail petition the case record has been transferred to this Court.

Hence by the previous order today has been fixed for production of the accused person, consideration of charge and hearing of the bail petition filed by the accused person namely Pronoy Roy @ Pupai.

On call learned lawyers for the accused person as well as the Ld. Public Prosecutor-in-charge appointed for this case are found to be present and ready for hearing.

Hence the case record is taken up for hearing of the bail petition.

The Ld. Advocates for both the accused person submitted that no bail application in respect of this accused person has been rejected on merit prior to this date by the Hon'ble High Court or the Hon'ble Supreme Court.

It was astutely expounded by the learned lawyer for the accused person that this accused person is in custody for more than four months whereas in our criminal jurisprudence bail has always been considered as the rule and rejection has always been considered to be aberration. Relying on this particular point, it was emphatically argued by the learned lawyer for the accused person that if on basis of the limited materials on record the personal liberty of the accused person is infringed further, in that eventuality it will percolate injustice upon the accused person. It was also argued that there is no material to suggest that the accused person has any criminal propensity and relying on this particular aspect it was submitted by the Learned Lawyer for the accused person, that the accused person may be granted bail on any condition. Pining reliance on these points the learned lawyer for the accused person prays for bail on any condition.

The Ld. Public Prosecutor-in-charge appointed for this case responded with vehemence and strongly opposed the bail prayer. It was argued by the Ld. Public Prosecutor-in-charge appointed for this case, that there are direct materials against the accused person and there has been recovery at the behest of this accused person and as per the version of the Ld. Public Prosecutor-in-charge appointed for this case, at this stage there is no escape from the conclusion that this accused person was the perpetrator. Inviting my attention to the materials in the CD, especially the statement of the victim and the other statements recorded u/s 161 of the Code of Criminal Procedure, 1973, it was argued by the Ld. Public Prosecutor-in-

charge appointed for this case, that there are strong prima facie materials to justify the gravity of the offence. Maintaining on this; it was argued by the Learned Public Prosecutor-in-charge that the offence is grave and serious in nature and releasing the accused person on bail at this stage where vital witnesses are yet to be examined will result in influencing the witnesses and making the trial a mockery.

The CD has been produced today. I have passionately traversed the entire gamut of this case and the materials in the CD with the same vigour, in order to aptly answer the question mooted before this court.

At the very outset I must hasten to articulate that though there cannot be any inexorable formula while considering a bail prayer, at the same time the parameters have well set by plethora of judicial pronouncements. In the decision reported in **Bhagwan Singh vs Dilip Kumar @ Deepu @ Depak and another**<sup>1</sup> the Hon'ble Supreme Court has set the parameters in the following terms:

*"12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependant upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that;*

*(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entails a conviction and the nature of evidence in support of the accusations;*

*(b) reasonable apprehensions of the witnesses being tempered with or the apprehension of there being a threat for the complainant should also weight with the Court in the matter of grant of bail.*

*(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.*

*(d) Frivolity of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.*

We may also profitably refer to a decision of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and another* (2004) 7 SCC 528 where the parameters to be taken into consideration<sup>17</sup> for grant of bail by the Courts has been explained in the following words:

*"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious*

*manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are: (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence. (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant. (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”*

Let us now test the bail prayer of the accused person on the anvil of the law as has been settled by the Hon’ble Supreme Court. However, before advertng to the submissions made by the Ld. Advocate for the accused person relating to the grant of bail, it is necessary to provide a brief conspectus of the allegations made against the accused person. In this case the accused person has been indicted for allegedly committing an offence punishable u/s 307 of the IPC. The facts which form the basis of such an allegation are stabbing of the victim as well as delivering multiple blows on the head of the victim, who is the brother of the accused person.

The CD has revealed that the statement of the victim has been recorded and the other statements recorded u/s 161 of the Code of Criminal Procedure, 1973 lends tremendous assurance to such statement. The CCTV has been collected and there has been recovery. All these facts taken together indicate the gravity of the offence. The facts also suggest that there has been multiple stabs delivered by the accused person which is indicative of the fact that there are prima facie materials which creates an allusion as regards the intention of the accused person.

Hence the gravity of offence which is an important factor militating against the accused person. The Hon’ble Supreme Court has emphasized that the gravity of the offense is a valid consideration for both granting and refusing bail. In plethora of judicial pronouncements including the decision of the Hon’ble Supreme Court in **Satender Kumar Antil vs. Central Bureau of Investigation & Anr.**<sup>2</sup> the Hon’ble Supreme Court has emphasized that the gravity of the offense is a crucial factor in determining any bail application. Seriousness of Punishment: The Hon’ble Supreme Court has also considered the severity of the punishment if the accused person is convicted to be one of the guiding factors. In the case of **Prahlad Singh Bhati vs. NCT, Delhi**<sup>3</sup>, the Hon’ble Supreme Court has observed that while granting bail, nature of accusations,

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2 (2022) 10 SCC 51

3 (2001) 4 SCC 280

severity of punishment, if accusation entails a conviction, nature of evidence in support of the accusations should be kept in mind. In the case of **Ram Govind Upadhyay vs. Sudarshan Singh**;<sup>4</sup>, it was held that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious. The heinous nature of crime warrants more caution. It has been also expounded by the Hon'ble Supreme Court that "More heinous the crime, greater is the chance of rejection of bail, though the exercise also depends on the factual matrix of the matter." [See **JAMEEL AHMAD Vs. MOHAMMED UMAIR MOHAMMAD HAROON & ANR**.<sup>5</sup>] and abiding by such principles this Court finds that scales are tilted against the accused person on this score.

Now I must hasten to articulate that the accused person before me is in custody for a considerable period of time and the Ld lawyer for the accused person has highlighted this point with some vehemence. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. If period of detention is accepted to be the only test and bail is granted on the solitary consideration, then this Court would not be balancing the rights and avowed object of trial, rather it will amount to "re-calibrating the scales of justice."

The victim is the brother of the accused person, and the other witnesses are also related to the accused person. Hence considering the status of the accused person vis-à-vis the witnesses, the chance of polluting the course of justice cannot be ruled out, rather facts expounded indicates that it is probable. That being the case, rejection of the bail prayer is the most justified conclusion that this court can adhere to.

Thus, based on the ratiocination adhered to above I have no dichotomy to conclude that the bail prayer of the accused person is liable to be rejected and hence the same stands rejected at this stage.

The accused person be remanded to J/C till the next date.

To 28.06.2024 for production of the accused person and consideration of charge.

A copy of this order in PDF/PDFA format be uploaded to the server following the modalities of Cr.R.O [since amended by Notification No. 131-G dated 15-01-2015].

Typed to the dictation directly;  
corrected on the system.

Sd/-Subhra Som Ghosal  
Additional District and Sessions Judge,  
01<sup>st</sup> Court, Alipore, South 24 parganas.

Sd/-Subhra Som Ghosal  
Additional District and Sessions Judge,  
01<sup>st</sup> Court, Alipore, South 24 parganas.

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4 (2002) 3 SCC 598

5 CRIMINAL APPEAL NO. 230 OF 2022 (Arising out of S.L.P.(Crl.) No. 245 of 2022)