

CNR No: WBSP01-005977-2024
Present: Subhra Som Ghosal
J.O Code: WB00984
Sessions Case No: 11 (05) of 2024



Order No. 12, dated: 18-07-2024.

As stipulated by the previous order today is fixed for production, further hearing of the bail petitions filed by the accused persons namely **Souvik Dasmal @ Sunny, Sukhdeb Sukumar Sutradhar and Sushanta Mondal @ Gera.**

All the accused persons apart from the accused person namely Biswajit Das have been produced from the Presidency Correctional Home.

A part record has been received from the Learned Additional Chief Judicial Magistrate, Alipore. From the part record it has transpired that the investigating officer submitted supplementary charge sheet before the Learned Additional Chief Judicial Magistrate, Alipore after collecting the report regarding the CCTV footages collected during the course of investigation. Let the part record along with the supplementary charge sheet be made part of this case record.

Copies of the report and the CCTV footages contained in pen drive have been supplied to 09 accused persons. The signatures of the accused persons acknowledging the receipt of the copy be kept with the case record.

On call the Ld. Advocates for the accused person as well as the Ld. Special Public Prosecutors-in-charge are found to be present. The Ld. Advocate for the de facto complainant was also present.

The investigating officer is present with the CD.

Hence the bail petitions are taken up for further hearing.

Ld lawyer for the accused person **Souvik Dasmal @ Sunny** at very exordium emphatically argued that materials exposted before this Court it will be clear that the accused person cannot be indicted for commission of any offence. Elaborating this, it was argued by the Ld. Advocate for the accused person that one of the accused persons of this case initiated an FIR with the allegations of rape and such investigation is still pending yet in this case the investigating officer has drawn a conclusion that the allegations of rape are false, which is illegal per se and cannot be countenanced by this Court. Castigating the conduct of the prosecution it was vehemently argued by the Ld. Advocate for the accused person that unless and until the investigation in relation to the allegations of rape is being concluded and the investigating officer therein opines that the allegations are

false, there is scope to accept the conclusion of investigation of this case, yet such course of action has been adopted such to the detriment of the accused person and it is the duty of this Court to hoist the personal liberty of the accused person by nullifying the illegality that has been perpetrated against the accused person.

Another plank of argument assiduously advanced by the Ld. Advocate for the accused person namely **Souvik Dasmal @ Sunny** was delicately poised on the improbabilities in the prosecution story. Inviting my attention to the time lines it was argued that there is no document at all to show that the medicines which were allegedly administered were potent enough to drowse the de facto complainant and his driver for a periods of 38 hours and if the prosecution version is considered with a realistic vision then it will appear without a doubt that the case is based on falsehood and something is not meeting the eye. Maintaining on this, it was argued that the accused person has a presumption of innocence militating in his favour and such pristine proposition of law cannot be wantonly ignored at the behest of the prosecution which is motivated and trying to implicate the accused person without the previous allegations of rape being brushed aside by investigation. Taking me through the statements recorded under section 161 of the Criminal Procedure Code 1973, it was submitted by the learned lawyer for the accused person that there are no materials in the entire case record to justify the indictment of the accused person with the offence imputed. It was adumbrated by the learned lawyer for the accused person that there are several discrepancies in prosecution case and and if all these circumstances are considered in juxtaposition with the first FIR, in that eventuality the improbabilities in the prosecution case as against this accused person will become axiomatic and based on such improbable circumstances it will not be pragmatic to detain a person who is already in custody for a considerable period of time. Relying on these arguments it was submitted by the Learned Lawyer for the accused person, that the accused person may be granted bail on any condition.

The Ld. Advocate for the accused person namely **Sushanta Mondal @ Gera** adopting the arguments advanced by the Ld. Advocate for the accused person **Souvik Dasmal @ Sunny**, submitted that in this case the prosecution story hinges on a dying declaration but as per the dying declaration this accused person is innocent and investigating officer has submitted the charge sheet against this accused person showing a feigned ignorance to such piece of evidence. It was further

argued that the prosecution cannot be allowed serve hot and cold at the same time and this Court must truncate such attempt on the part of the prosecution by granting bail to the accused person or else it will percolate injustice to the accused person.

The Ld. Advocate for the accused person, **Sukhdeb Sukumar Sutradhar** was precise and submitted that his client has been implicated only on the basis of an agreement which says that he took the rooms on rent. Pinning reliance on this aspect, it was argued that the accused person may not be made to suffer ignominy of incarceration any further and he may be enlarged on bail.

The prayer for bail was vehemently opposed by the Ld. Special Public Prosecutors-in-charge. The Ld. Advocate for the de facto complainant also opposed the bail prayer. It was argued by the Ld. Public Prosecutor-in-charge appointed for this case, that there are direct materials against all the accused persons and the offence being grave and serious in nature, releasing the accused persons on bail will result in influencing the witnesses and making the trial a mockery. It was further submitted by the Learned Public Prosecutor-in-charge that the social milieu of this case and its ramification need to be considered by this Court and in a case of this nature if the accused persons are shown leniency in that event, it will give impetus to the accused persons how conspired to illegally frame a person by manipulating the stringent provisions of rape. It was also argued that the accused persons cannot pave the escape route by citing certain perceived improbabilities when indeed the investigation has revealed that the accused persons tried to play fraud with the system. In summation the Learned Public Prosecutor-in-charge prayed for rejection of bail prayers.

The CD has been produced today. I have passionately traversed the entire gamut of this case and have also inspected 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. It has become sanctified that it is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

3. Prima facie satisfaction of the Court in support of the charge.

Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. The Hon'ble Supreme Court has repeatedly sounded a word of caution that any order de hors such reasons suffer from non-application of mind.

The Ld. Advocates for the accused persons have emphasized on the personal liberty of the accused persons and it was argued that it cannot be sacrificed at the altar of surmise of the prosecution. In this context it is worthy to note that there is no quandary over the proposition that life and liberty are not conferred by the Constitution alone, they are inherent in all human beings and by legislative edict this court has been entrusted with the duty to hoist and protect such rights. I do concede with the Ld lawyer for the accused persons on this score. Right to liberty is not a penumbral right. Not a concomitant right. It is the very essence of life. It is not only a fundamental right, but an inalienable one. But, at the same time I must hasten to articulate that the liberty of an individual is not absolute, and detention should be authorized if so required. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible.

In ***Neeru Yadav vs. State of Uttar Pradesh and another reported in (2014) 16 SCC 508*** the Hon'ble Supreme Court has observed:-

“Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

Hence it will not be pragmatic to incline towards granting bail to the accused persons solely relying on the argument of personal liberty of the accused person, and it is the indelible duty of this Court to weigh the prima facie factors.

Mind being fumigated with the aforementioned legal proposition; when I introspect, the materials exposted before me; I find that the gravity of the alleged offence is axiomatic, and it strongly militates against the bail prayers. The accused persons have been indicted with the allegations of creating a veil of deception and manipulating the

system masked by the veneer of rape. The allegations against the accused persons are clear: to subvert justice, to twist the law into a weapon to serve their sinister agenda. The CD has prima facie revealed that the accused persons have the propensity of fabricating evidence and concocting tales that ensnare the innocent. Hence this aspect of this case must be decided against the accused persons.

Definitely grant of bail, is a discretionary order and period of detention is a guiding factor, but such discretion is to be exercised in a judicious manner and on the application of certain settled parameters and it cannot be on the solitary plank of "period of detention". Gravity of the alleged crime has to be considered by this Court and as observed by the Hon'ble Supreme Court "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 **CRIMINAL APPEAL NO. 230 OF 2022 (Arising out of S.L.P.(Crl.) No. 245 of 2022) JAMEEL AHMAD Vs. MOHAMMED UMAIR MOHAMMAD HAROON & ANR.**]

I must also hasten to articulate that after having perused the materials in the CD, the claim of the accused persons that they are innocent cannot be countenanced at this stage. Definitely investigation as regards the rape case is pending and a Writ Petition being WP No. 3676 of 2024 is also pending in relation to that investigation, but while staying confined to the materials of this case, I am convinced that there are prima facie materials against the accused persons.

Much was argued on the point of alleged discrepancies and improbabilities in the case of the prosecution, but at this stage it will not be pragmatic to go into such particulars in details as it has been repeatedly held by the Hon'ble Supreme Court that at the time of considering a bail prayer indulging into a mini trial is not licit. In **Mahipal v. Rajesh Kumar alias Polia and Anr; 2020 (2) SCC 118** it has been held by the Hon'ble Supreme Court that the Court, amongst others, must consider the prima facie view of whether the accused has committed the offence, nature of the offence, gravity, likelihood of the accused obstructing in any manner or evading the process of justice. Grant of bail draws an appropriate balance between public interest in the administration of justice and protection of individual liberty in a criminal case. The prima facie examination is on the basis of analysis of the record and should not be confused with examination in detail of the evidence on record to come to a conclusive finding.

Axiomatically thus; attempt on the part of the Ld. Advocates for the accused persons cannot be countenanced at this stage and this Court must not venture into appreciating the evidences as done in course of trial.

Hence based on the above delineations I find that it is not a fit case where leverage of bail should be extended to the accused persons and as an obvious outcome the prayer for bail as manifested by the accused persons namely **Souvik Dasmal @ Sunny, Sukhdeb Sukumar Sutradhar and Sushanta Mondal @ Gera** stands rejected at this stage.

Return CD. Call for CD.

Fix 09.08.2024 for production of the accused persons through V.C 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 of the Hon'ble High Court [since amended by Notification dated 15-01-2015].

Typed to the dictation directly;
corrected on the system.

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| Sd/-Subhra Som Ghosal | Sd/-Subhra Som Ghosal |
| Additional District & Sessions Judge, 01 st Court, Alipore, South 24 Pgs. | Additional District & Sessions Judge, 01 st Court, Alipore, South 24 parganas. |