

SC Case No: 34 (08) of 2023
(CIS No.361/23)
CNR No: WBSP010120262023
Present: Subhra Som Ghosal (J.O Code: WB00984)

Order No. 06, dated: 19-09-2023.

All that the accused persons namely **A1) Mainuddin Molla @ Madhu @ Mahiruddin Molla @ Bhadu, A2) Sukur Sk @ Sukur Ali Sk, A3) Ajaruddin Sk, A4) Ayamad Ali Sanpui, A5) Bapi Molla, A6) Pintu Molla, And A7) Aizul Jamadar@ Molla** have been produced from J/C.

As stipulated by the previous order today is fixed for production of the accused persons and hearing of the bail petitions filed by the accused persons namely A6) Pintu Molla and A7) Aizul Jamadar @ Molla.

On call learned lawyers for the accused persons, de facto complainant 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.

The Ld. Advocates for both the accused persons submitted that no bail application in respect of these accused person have been rejected on merit prior to this date.

Ld lawyer for the accused person Aizul Jamadar @ Molla at very exordium emphatically argued that at least some material is required to indict a person and keep him in custody in denial of his personal liberty but in this case such sanctified position of law has been infringed and the prosecution has wantonly ignored the fact that the detention of an accused person must be preceded by strong prima facie case militating against the accused person. Inviting my attention to the copies those have been filed along with the charge-sheet, it was submitted by the learned lawyer for the accused person Aizul Jamadar @ Moll that no witnesses have stated that this accused person was present at the time of the alleged incident and the only allegation that has been made against the accused person is relating to his involvement in the alleged criminal conspiracy. Taking me through the statements recorded under section 161 as well as under section 164 of the Criminal Procedure Code 1973, it was submitted by the learned lawyer for the accused person that out of 05 witness examined under section 164 of the Criminal Procedure Code 1973, only one witness in his statement under section 164 of the Criminal Procedure Code 1973 has deposed in a single line that this accused person was involved in the alleged incident and apart from this witness 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 the statement recorded under section 161 as well as under section 164 of the Criminal Procedure Code 1973 and if all those statements are considered in juxtaposition with the 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 the last 119 days. It was astutely expounded by the learned lawyer for the accused person that in

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our criminal jurisprudence bail has always been considered as the rule and rejection has always been considered to be aberration and 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 after culmination of the probe in that eventuality it will perlocate injustice upon the accused person. Pining reliance on these points the learned lawyer for the accused person prayer for bail on any condition.

The learned lawyer for the other accused person Pintu Molla in order to espouse the cause of granting bail to the accused person submitted that the accused person has suffered the ignominy of arrest and prolong detention since the inception of this case and his further detention will be Sisyphean endeavour. Resonating the arguments as manifested above, it was argued by the learned lawyer for the accused person that after culmination of the investigation, detention of the accused person can only be directed in order to ensure the presence of the accused person during the course of trial and in absence of any compelling circumstances, personal liberty of an individual must not be truncated by this court. Inviting my attention to the materials in the case record, it was submitted by the learned lawyer for the accused person that the accused person is having his permanent place of residence and there is no material in the case record which can create even an allusion that the accused person will abscond if he is granted bail in this Case. 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.

The Ld. Public Prosecutor-in-charge appointed for this case responded with vehemence and strongly opposed the bail prayer. Assisted by the Ld. Advocate for the de facto complainant it was argued by the Ld. Public Prosecutor-in-charge appointed for this case, that there was direct materials against the accused person A6 and there has been recovery of the motor cycle used in the crime at his behest 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 involved in the alleged offence. Inviting my attention to the materials in the CD it was argued by the Ld. Public Prosecutor-in-charge appointed for this case from the materials collected during the probe it has been prima facie established that the accused person A7 was the master mind and he has orchestrated the illegal design and also funded money for execution of the offence and his release at this stage will thwart the course of trial.

Adding to this, the Ld. Advocate for the de facto complainant vehemently argued that there is a past history of animosity between the parties and the accused persons are very much influential and if they are the release on bail at this stage, then it will put the trial into peril and no independent witness will be able to depose against the accused persons. Negating the version of the Ld. Advocate for the accused person, it was submitted by the Ld.

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Advocate for the de facto complainant that the accused person are having several cases pending against them and they are have criminal propensity and hence their bail may not be considered with any leniency. It was further pointed out that the offence is grave and serious in nature and releasing the accused persons on bail 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 have introspected 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, but 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 repeated sounded a word of caution that any order de hors such reasons suffers from non-application of mind.

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 militates against the bail prayer. 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.(CrI.) No. 245 of 2022) JAMEEL AHMAD Vs. MOHAMMED UMAIR MOHAMMAD HAROON & ANR.]

I must also hasten to articulate that after having perused the CD, the claim of the accused persons that they are innocent cannot be countenanced at this stage. It is also axiomatic that charge is yet to be framed and vital witnesses are yet to be examined in this case. Where circumstances presented give room to suspect their culpability in the offences imputed and circumstances creating the allusion that there are chances of polluting the course of the trial, if released on bail, I find that the accused persons are not entitled to be released on bail at this stage.

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Much was argued on the point of alleged discrepancies between the statements recorded under section 161, 164 of the Criminal Procedure Code 1973 and the FIR 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. Advocate 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 person and as an obvious outcome the prayer for bail as manifested by the accused persons namely **A6) Pintu Molla, And A7) Aizul Jamadar@Molla** stands rejected at this stage.

The accused persons be remanded to J/C and be produced on the date fixed.

To 09-10-2023 for production of the accused persons and consideration of charge.

Typed to the dictation directly;
corrected on the system.

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

Order No. 07, dated: 19-09-2023, later.

At this stage the Ld. Public Prosecutor-in-charge appointed for this case submitted that the Investigating Officer is yet to receive the report from the ballistic expert and the sanction order from the Ld District Magistrate, South 24 parganas at Alipore.

In this case importance of the report of the ballistic expert and sanction order as per the Arms Act is axiomatic. Such evidence is yet to come in an acceptable form. The accused persons are in custody and speedy trial is their Constitutional right. This Court appreciates the gumption of the ballistic expert and hopes it will continue till the end of the process. The expert is requested to ensure that the examination process is completed within the time span and the reports are submitted without least possible delay.

Let a copy of this order be sent to the investigating officer for his information and necessary action and the copy of order be served upon the ballistic expert through the investigating officer.

To date.

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