

Present: Subhra Som Ghosal
J.O Code: WB00984
Special Case No: 40 of 2021
CNR No: WBSP01-012375-2021

Order No. 17 dated: 29-04-2024.

As stipulated by the previous order today is fixed for appearance.

The accused persons namely **1. Sambhu Dey** and **2. Somnath Das** have appeared today pursuant to the summons issued upon the accused persons and have filed a bail application. Copy of the bail application has been served on the Ld. Public Prosecutor-in-charge. Vakalatnama has been filed on behalf of the accused persons.

The accused persons are taken into custody.

The de facto complainant is absent today.

On call Ld. Advocates for the accused persons as well as the Ld. Public Prosecutor-in-charge are found to be present.

At this stage it is required to be mentioned that today the de facto complainant has not appeared in this case. However the accused persons have surrendered in obedience to the summons issued upon them. They have been taken into custody by this Court. In this context I must hasten to articulate that deferment of hearing of bail application without compelling reasons results in violation of Article 21 of the Constitution of India. The right of the victim under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has to be balanced with the right of an accused to have his bail application heard within a reasonable period of time. The bail processual framework has to be consistent with the requirements of Articles 14 and 21 of the Constitution of India. Good authority has long entrenched the right of an accused to seek hearing of his bail application in the charter of fundamental rights assured by the Constitution of India.

Definitely the de facto complainant has not been served with any prior notice but at the same time it is required to be mentioned that in this case process was issued against the accused persons and they have appeared in obedience to such summon to appear after the charge-sheet was filed and they have surrendered on basis of such summon. The case record will reveal that the Investigating Officer after his investigation has not supported the allegations under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Hence I find no predicament in taking up the prayer for bail for hearing and considerations on this date. Hence the bail petition is taken up for hearing.

The Ld. Advocate for the accused persons at the very exordium submitted that in this case the accused persons has been issued summons after submission of the charge-sheet. It was also argued that during the course of investigation the accused persons were issued notice under section 41A of the Criminal Procedure Code 1973 and the accused persons complied with that notice and participated in the process of probe. Pinning reliance on these aspects; it was vehemently argued that after culmination of the investigation, custody of the accused persons in any form will serve no purpose at all, rather it will percolate injustice. It was further submitted that the accused persons participated in the probe and today also they are ready to surrender to any condition which will be imposed by this court and will appear on each and every subsequent dates. Pinning reliance on these points the Ld. Advocate for the accused persons prayed for bail on any condition.

The Ld. Public Prosecutor-in-charge raised objection to such prayer.

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The CD has been produced. I have meticulously inspected the materials available in the CD.

At the very outset it is required to be mentioned that the offence for which the accused persons have been indicted are not heinous. Investigation has culminated in charge-sheet and the Investigating Officer has not supported the allegations under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. At this stage I must also hasten to articulate that bail jurisprudence is firmly embedded in the Constitutional regime of fundamental rights and it is sanctified position of law that detention cannot be on the alter of surmise and conjecture. Definitely the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has recognized the right of the de facto complainant but that does not authorize this court to ignore the right of the accused persons especially when the Investigating Officer has not supported the allegations under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and doing this will amount to “re-calibrating the scales of justice”.

Definitely there cannot be any inexorable formula while considering a bail prayer, but it can be deciphered from the decisions of the Hon'ble Supreme Court that the most important considerations while authorizing detention at this stage should be whether fair probe/trial could be secured if the accused persons are released on bail and whether the accused persons, if admitted to bail; would appear to take his/her trial; and I think that in coming to a determination on those points three additional element in general has to be considered namely: the offence for which the accused persons have been indicted i.e. gravity of the allegations, the nature of the evidence by which it is supported i.e. prima facie materials supporting such allegations and the punishment to which the accused persons would be liable if convicted i.e. severity of punishment if found to be guilty. As mentioned supra; the allegations as ventilated through the charge-sheet does not appear to be heinous and investigation has culminated. The materials in the CD does not reveal any other ramification of the alleged offence. Given the nature of the case juxtaposed with the fact of conclusion of the investigation, there is no scope from the accused persons to tamper with the evidences. There is no materials in the CD to create even an allusion that the accused persons have criminal propensity or that they will abscond if they are released on bail.

Hence considering every possible facet and based on the above delineations, the bail prayer is allowed. The accused persons namely **1. Sambhu Dey** and **2. Somnath Das** may find interim bail till the next date on furnishing bond of Rs. 1,000/- each with two sureties of Rs.500/- each to the satisfaction of the Ld. Chief Judicial Magistrate, South 24 parganas at Alipore i/d to J/C.

If on bail; the accused persons are directed to stay present on the date fixed and shall appear on each and every subsequent dates. If on bail the accused persons:

- (a) shall attend in accordance with the conditions of the bond executed as per this order;
- (b) shall not commit and/or indulge in any act similar to the offence for which they have been indicted in this case,
- (c) shall not directly or indirectly make any inducement, threat or promise to any persons

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acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

To 15-07-2024 for appearance and further hearing.

Issue notice upon the de facto complainant and he is at liberty to submit necessary objection against the interim bail so granted on this date.

Typed to the dictation directly;
corrected on the system.

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

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