



IN THE COURT OF XLIX ADDL. CITY CIVIL AND SESSIONS
JUDGE, [SPECIAL COURT FOR TRIAL OF NIA CASES],
(CCH-50) AT BENGALURU

Dated : 22nd day of June, 2024

PRESENT:

SRI GANGADHARA C.M.,
B.Com., LL.B.,
XLIX Additional City Civil & Sessions Judge,
[Special Judge for trial of NIA Cases],
(CCH-50) Bengaluru.

Spl.C.No.187/2024

Complainant : The National Investigation Agency,
Bengaluru.

(By: Learned Spl. Public Prosecutor)

Vs.

Accused : Mr. Firdoush @ MD Ferdous Bapari
and Others

Accused No.1 : Mr. Firdoush @ Md Ferdous Bapari
@ Firdous, S/o Moksed Bapari,
Aged about 37 years, R/at No.70,
Outer Ring Road Devarabesanahalli,
Bellanduru, Bengaluru.

Permanent Address : Purba Khortakata,
Rajapura Shoronkhola Bagerhat,
Bangladesh.

(By : Sri M.C., Advocate)

ORDERS

Accused No.1 - Firdoush @ Md Ferdous Bapari @ Firdous
has filed this bail application under Section 439 of Cr.P.C. seeking
regular bail in this case.

2. Accused No.1, in his bail application, has stated the facts of the case in brief and specifically pleaded that the complainant Police have registered a false case against him and he has been falsely implicated in this case without any concrete evidence. LW.18 to LW.46, who are from Bangladesh, themselves indulged in waste segregation and collection work and none of the accused persons forced and/or compelled them to do such activities. Neither the victims nor their respective family members made any efforts to get free themselves from the clutches of waste segregation business and at no point of time, they lodged any complaint or missing complaint during the lengthy period. Even the victims used to go to various places and they never attempted to raise any hue and cry to alert public or Police. Though they had mobile phones, they never tried to call their respective family members or never tried to call police to seek help and get free from the clutches of the accused persons. He has further pleaded that he is never involved directly or indirectly in human trafficking business with co-accused persons. He has been roped in this case falsely only because he is a Bangladeshi national. He is an innocent. He is citizen of India and resident of West Bengal. Despite having valid documents, the Investigating Officer has not conducted proper investigation and blindly roped him in this case as accused No.1. The offences are not attracted as alleged against him. He has further pleaded that he has already undergone more than 50% of punishment as an undertrial prisoner. Hence, he is entitled for bail under Section 436(A) of Cr.P.C. He has further pleaded that 55 witnesses are cited in the charge-sheet. So far, none of the witnesses are examined and there is no possibility of concluding the trial in near future. The

allegations made against him are vague and baseless. There is no prima facie case about his involvement in the alleged crime. He has further pleaded that he has aged parents who are suffering from old age ailments. He is the only earning member in his family. He has further pleaded that he is the permanent resident of the address mentioned in the charge-sheet and having deep roots in the society. There are no bad antecedents against him. He is ready to abide by the terms and conditions that may be imposed by this Court and is ready to offer surety to the satisfaction of this Court. Hence, he has prayed to allow the bail application.

3. The learned Special Public Prosecutor has opposed the bail application by filing his objections. He has stated the facts of the case in brief and specifically contended that accused No.1 approached this Court in CrI.Misc.No.2860/2024 seeking the relief of bail. Upon consideration of the materials available on record, this Court rejected the said bail petition on 08.04.2024. There are no change in the fact situation or in law from the date of previous rejection of bail petition filed by accused No.1. On this ground alone, the bail application filed by accused No.1 is liable to be rejected. Accused No.1 is a Bangladeshi national. He entered India illegally and got fabricated several Indian identity documents. He is involved in trafficking Bangladeshi nationals into India. The Investigating Officer has recorded the statements of witnesses. They have clearly stated that accused No.1 is a Bangladeshi national and has subjected several Bangladeshi nationals to forced labour as a result of human trafficking. Many incriminating documents have been seized from the possession of accused No.1 including his passport. Hence, the charge-sheet materials

placed before this Court would clearly indicate a prima facie case against accused No.1. The alleged offences are punishable with imprisonment for life. If accused No.1 is released on bail, he is likely to flee away from the clutches of law, threaten the prosecution witnesses and tamper with the prosecution evidence. Hence, he has prayed to reject the bail application.

4. This Court has heard the arguments of the learned counsel appearing for accused No.1 and the learned counsel representing the learned Special Public Prosecutor.

5. The points that arise for court consideration are as follows :

1) Whether accused No.1 has made out grounds to exercise discretion under Section 439 of Cr.P.C., and to enlarge him on regular bail?

2) What order?

6. Findings of this Court to the above points are as follows :-

Point No.1 : In the negative;

Point No.2 : As per final order, for the following;

REASONS

7. Point No.1:- It is the case of the prosecution that the Central Government received a reliable information that certain entities based in Karnataka having linkages with facilitators and traffickers based in Assam, Tripura and Bangladesh, which are part of a transnational human trafficking network and are involved in trafficking of persons of Bangladesh and Rohingya of Myanmar origin, into India through Indo-Bangladesh border by the said

accused persons and the accused persons were using fake identity documents and were in touch with cadres of proscribed terrorist organisations operating from across the border with an intent to facilitate infiltration of operatives and sympathizers of these organisations into India. Therefore, the Government of India, Ministry of Home Affairs, CTCR Division, North Block, New Delhi issued an order vide F.No.11011/91/2023/NIA, dated 07.11.2023 and directed the NIA to take up the investigation of the said case. Accordingly, the NIA registered a case in R.C.No.01/2023/NIA/BLR on 07.11.2023 for the offences punishable under Sections 120-B, 370, 465 and 471 of IPC and Section 18 of U.A.(P) Act and took up the investigation. During the investigation, searches were conducted at various places and seized various documents of Bangladesh indicating the nationality of the accused persons along with certain digital devices. The accused persons were traced, arrested and they were produced before this Court and they were remanded to Police custody for custodial interrogation. After completion of custodial interrogation, the accused were produced before this court and they were remanded to judicial custody. The Investigating Officer has recorded the statements of witnesses, collected other evidence against the accused persons and submitted the final report before this Court for the offence punishable under Sections 120-B and 370(3) of IPC, Sections 14, 14-A(b) and 14-C of Foreigners Act and Section 3 of the Passport (Entry into India) Act, 1920 r/w Rule 6 of the Passport (Entry into India) Rules, 1950. At this stage, accused No.1, who is in judicial custody, has approached this Court for seeking the relief of bail.

8. It is the first and foremost contention of the prosecution that accused No.1 approached this Court in Crl.Misc.No.2860/2024 seeking the relief of bail and the same was rejected on 08.04.2024. There is no change in the fact situation or in law from the date of previous rejection of the bail petition filed by accused No.1. Hence, the successive bail application filed by accused No.1 is not maintainable.

9. This Court has cross verified the contention raised by the prosecution on the file of this court since there is no whisper about the earlier petition in the bail application filed by accused No.1. Upon verification, it reveals that accused No.1 had filed a Crl.Misc.No.2860/2024 seeking the relief of bail. This Court, upon consideration of the relevant materials on record, rejected the said bail petition on 08.04.2024. Within a span of two months, accused No.1 has approached this Court with this application for seeking the relief of bail once again. Hence, the present application is a successive bail application.

10. Now the question before this court is whether the successive bail application filed by accused No.1 is to be considered on merits once again. In order to find out the answer to this question, this court has placed reliance on the decision of the Hon'ble Apex Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav and another** reported in (2005) 2 SCC 42. In this decision, this court has placed reliance on para 20, which reads as follows;

"20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a

different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country.”

(Emphasis supplied)

11. This Court has also placed reliance on the decision of the Hon'ble Apex Court in the case of **Lt. Col Prasad Shrikant Purohit v/s The State of Maharashtra, (2018) 11 SCC 458**. In this decision, the Hon'ble Apex Court has held at para 30 as follows :-

“30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.”

12. As per the ratio laid down in the aforesaid decisions, the scope of the present bail application is very limited and this Court has to see that there is any change in circumstance after dismissal of the bail petition. In view of the aforesaid decisions, there is no need to consider the successive bail application on merits of the case once again, but the same can be considered if there is any change in circumstance. Keeping in mind the aforesaid salutary principles, this court proceeds to examine whether there is any change in the fact situation or in law to consider this successive bail application.

13. A perusal of the bail application, accused No.1 has not stated about rejection of his earlier bail petition by this Court. He has suppressed the material true fact before this Court and has approached this court with unclean hands. On this ground alone, the bail application filed by accused No.1 is liable to be rejected.

14. A perusal of the bail application, accused No.1 he has not pleaded any change in the fact situation or in law to file the present bail application after rejection of his earlier bail petition. It is pertinent to note that, accused No.1 had filed the bail petition before this Court after filing of the final report by the complainant agency. The grounds urged in the present application were already urged in the earlier petition and this court has already considered the said grounds and rejected the bail petition. Therefore, there is no change in the fact situation or in law to consider the successive bail application filled by accused No.1. Hence, the same is liable to be rejected.

15. Accused No.1 has raised a fresh contention in his bail application that he has already undergone 50% of the punishment prescribed for the offences alleged against him as an undertrial prisoner and he is entitled for bail under Section 436(A) of Cr.P.C. It appears from the records that the offences alleged against accused No.1 are punishable with imprisonment for life. Therefore, there is no question of undergoing 50% of the punishment prescribed for the offences alleged against accused No.1. Hence, this Court does not find any merit in the said contention. As noted above, there is no change in the fact situation or in law after dismissal of the bail petition filed by

accused No.1 to consider the successive bail application filed by accused No.1. In the opinion of the Court, this is not a fit case to exercise discretion under Section 439 of Cr.P.C. **Accordingly, this Court has answered Point No.1 in the negative.**

16. Point No.2 :- In view of the discussions made supra, this Court proceeds to pass the following :-

ORDER

The bail application filed by accused No.1 - Mr. Firdoush @ Md Ferdous Bapari @ Firdous under Section 439 of Cr.P.C. is hereby rejected.

(Dictated to the Senior Sheristedar (Stenographer Grade-I), transcription thereof computerized by him, corrected and then pronounced by me, in open Court on this **22nd day of June, 2024**)

(GANGADHARA C.M.),
XLIX Addl. City Civil & Sessions Judge,
(Special Judge for trial of NIA Cases),
(CCH-50) Bengaluru.