



Through:
[Signature]

DISTRICT SOUTH 24 PARGANAS

IN THE HIGH COURT AT CALCUTTA

CRIMINAL MISCELLANEOUS JURISDICTION

APPELLATE SIDE

C.R.M. No. 3761 of 2012

IN THE MATTER OF:

An application under Section 439 of the Code of Criminal Procedure;

And

IN THE MATTER OF:

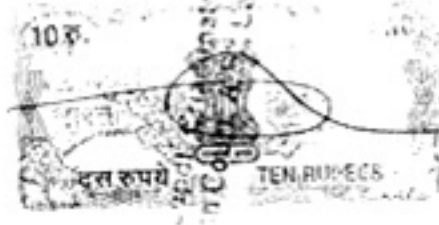
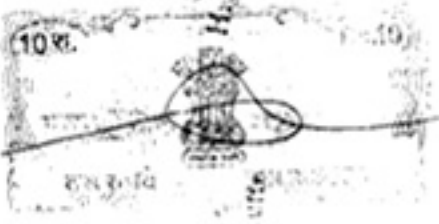
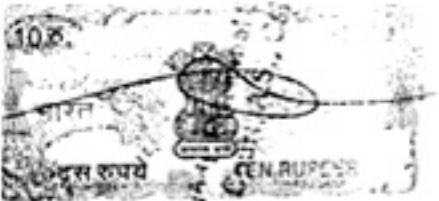
Order dated March 1, 2012 passed by the Learned Chief Judicial Magistrate, 24 Parganas, South rejecting the prayer of bail of the petitioner and directing him to be remanded to judicial custody in connection with Lake Police Station Case No.293 of 2011 dated 9 December 2011, under Sections 304, 308, 285/36 of the Indian Penal Code read with Sections 11C,

SOURI-EL EXEMPTER

Commissioner of Affidavits
High Court, Appellate Side
Calcutta

23/12

28/3/12



11L and 11J of the West Bengal Fire
Services Act 1950;

- And -

IN THE MATTER OF:

Radheshyam Goenka, son of Late
K.D. Goenka, residing at 110A,
Southern Avenue, Kolkata 700029.

...Petitioner (In jail)

-Versus-

The State

...Opposite Party

~~28/3/12~~

No.

of 20

| Serial No. | Date | Notes and Orders |
|------------|------|--|
| | | <p>cotton and other carbonaceous materials ether, spirit, pharmaceutical articles, diesel which were illegally and unauthorizedly stored there which was actually meant for parking of cars and with the definite knowledge and at the behest of the accused persons the same was converted to a place of storage. Several office rooms were constructed with plywood and vinyl floors which are also highly combustible. According to the FSL report the fire was ignited there either from extraneous sources namely flame or glowing materials due to some electrical fault and then the fire was developed through smouldering with generation of heat and smoke and carbonisation of combustible materials and out of this the dense smoke and hot gases were generated. Shortly all the floor were field up with toxic smoke causing poor visibility, choking and quite a large number of patients in critical condition as well as the hospital staffs were trapped inside. Initially the fire brigade was not informed and a few hospital staffs with a most casual approach tried to deal with the situation. Even the local boys who rushed to the spot to rescue the victim were also not permitted to enter. Finally fire brigade and police was informed and with the help of sky ladders and with great efforts the fire brigade personnels by breaking open the glass pans rescued the victims. In the incident 93 patients were died and several others became seriously ill.</p> <p>During investigation, a good number of witnesses were examined and their statements were recorded. The patients who could be rescued and the relatives of the deceased patients narrated the horrid experience of their life in a place where they had come to obtain the best medical treatment with luxury rates (NABH). The patients survived revealed that the smoke caused tremendous eye irritation and at that time their visibility became extremely poor and became dark. They also suffered tremendous breathing problem. Most tragic was that there was no evacuation team to lend them support.</p> |

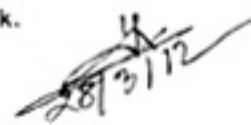
Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/3/12

No. _____ of 20

| Serial No. | Date | Notes and Orders |
|------------|------|--|
| | | <p>Many patients were bedridden or disable to move and had to inhale deadly smoke and due to that many of them died. Some of them stated that they came out like a blind man feeling the railing of the staircase and some broke the glass panes and came out to the cornice and waited for the Fire brigade and DMG and Commandos of the police to bring them down using ladders, ropes and sky ladders and few having better acrobatics skills came out by breaking glass panes taking lot of risk. The DMG and the Commandos of Kolkata police and the Fire Brigade and some brave Samaritans from the adjoining locality braved the heat and smoke and entered into the building and lend a helping hand to pull them out from the clutches of death. The said rescue team also reiterated the fact about the adverse situation due to formation of dense smoke and for which they had to use Breathing Apparatus to enter the building. The rescued persons mentioned that they did not get help from the Doctors, Nurses or any other staff of the hospital except a few as most of them had fled away. The rescued patients as well as the relatives of the patients who died, unanimously condemned the absence of any evacuation system and the lackadaisical attitude of the Hospital Authorities towards fire safety, ad the reluctance of the staff to render any help to the patients.</p> <p>During investigation it revealed that a fire had broken out in the intervening night of 8-12-2012 and 09-12-2012 in the basement of the Annexe-I Building of AMRI Hospital situated at 15, Panchanantola Road and it was noticed by the persons/staff of Frank Ross Pharmaceuticals on duty and some staff of the Mechanical store at about 3-25 hrs or so and smoke was detected much earlier than that. From their statement it was evident that the fire had been noticed on some inflammable articles kept in the said Pharmaceutical store, like cotton gauge, rubber items and those items acted as fuel and the smouldering fire started growing steadily emitting dark fumes and smoke. The said staff got panicked</p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.



| Serial No. | Date | Notes and Orders |
|------------|------|---|
| | | <p>and called the Security staff and the said security persons tried to put off the fire with the available fire extinguisher but failed to douse the fire completely. The Night Administrator, who was in charge of the Entire Complex came to the said spot and asked the security staff to put off the fire. The seizure of an Incident Report Register reflect that the incident of Fire and hospital took place about a dozen times earlier. The Night Administrator following the same guidelines tried to fight the fire with the help of his staff who had neither proper training or equipment, thus allowing a huge smoke which was formed due to the engulfing huge stock of cotton, gauge, Mattress, Blankets, PVC and rubber items, Medicine, plywood, wooden structures etc.</p> <p>From KMC authority it could be learnt that the plan of the annexe building of AMRI was sanctioned in 1999 and construction started thereafter and completed in 2005. Completion Plan was sanctioned in 2006 with fine for the deviations made. In the sanctioned plan, the upper basement has been earmarked as the car parking space. As a result it was not under the central air conditioning system of the hospital and the electrical shaft originated from there to the top of the building. The fire brigade report indicate that the smoke was the sole cause of death.</p> <p>3. The learned Senior Counsel Mr. Balai Chandra Ray appearing on behalf of the petitioners, in his argument vehemently contended that the petitioners are in custody for about 99 days and after conclusion of investigation and submission of charge-sheet, at this stage their detention is no more required and more particularly when the trial is not likely to be concluded shortly as this is a case where the prosecution has proposed to examine as many as 455 witnesses and exhibit several documents to prove the charge against the accuseds. He further contended that petitioners' are the mere directors of AMRI and standing on much better footing than the co-accuseds Dr. Mani Chettri, the Managing</p> |

28/3/12

No.

of 20

Notes and Orders

| Serial No. | Date | Notes and Orders |
|------------|------|---|
| | | <p>Director of AMRI and one other director Dr. Pronob Dasgupta who have been granted bail by the Court below and another co-accused Radheshyam Agarwal who is also a director of the said hospital and released on bail by this Court. He further submitted that such order of granting bail to the aforesaid two co-accuseds by the Court below has never been challenged by the State before any higher forum and although SLP has been filed before the Hon'ble Supreme Court against the order of granting bail to Radheshyam Agarwal but till date no order has been passed. He next contended that in the charge-sheet, neither any specific allegation has been made against the petitioners, except that they being the directors of the AMRI Hospital are responsible for the fateful incident nor any role has been attributed to them in the commission of the alleged offences. According to him on the face of the materials collected during investigation no offence can said to have been made out against the present petitioners. Lastly, he submitted that there is no word in the charge-sheet that the petitioners in any manner tried to influence the witnesses or made any attempt to tamper with the evidence.</p> <p>In support of his contention Mr. Ray heavily relied on two decisions of the Hon'ble Supreme Court, one in the case of Sanjay Chandra v. CBI, reported in (2012) 1 SCC 40 and other in the case of Susanta Ghosh v. State of West Bengal arising out of SLP (Crl) No. 9350 of 2011. In this regard Mr. Ray draws our attention to the observations of the Hon'ble Apex Court in paragraphs 40, 41, 42, 44, 45 and 46 in the case of Sanjay Chandra v. CBI (supra). The observation of the Apex Court referred by the Counsel of the petitioners are quoted below;</p> <p>40. <i>The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the</i></p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/3/12

No.

of 20

| Serial No. | Date | Notes and Orders |
|------------|------|--|
| | | <p><i>accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is require.</i></p> <p>41. This Court in <i>Gurcharan Singh v. State (Delhi Admrt.)</i> observed that two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.</p> <p>42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.</p> <p>44. This Court, in <i>State of Kerala v. Raneef</i> has stated: (SCC p. 789, para 15)</p> <p>"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr.</p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/12

No.

of 20

| Serial No. | Date | Notes and Orders |
|------------|------|---|
| | | <p><i>Manette in Charles Dickens's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."</i></p> <p>45. In Bihar Fodder Scam (Laloo Prasad case) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.</p> <p>46. We are conscious of the fact that the accused are charge with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if prove, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.</p> <p>Mr. Ray also referred to the observation of the Apex Court in para 17 in the Case of Susanta Ghosh v. State of West Bengal (supra).</p> <p>17. As indicated hereinabove, the parameters laid down by this Court for considering grant of bail to an accused; include the likelihood of his absconsion and tampering with the evidence or the witnesses or even the investigation. Tampering with the evidence or the investigation is no longer relevant since charge-sheet has already been filed in the case. As far as absconsion is concerned, the Appellant being a sitting MLA, even such a possibility is remote. There is, of course, the possibility that the Appellant may tamper with the witnesses. However, considering the fact that the matter has been reopened as far as the Appellant is concerned, after an interval of about 10 years, even such a possibility appears to be remote.</p> |



No.

of 20

| Serial No. | Date | Notes and Orders |
|------------|------|---|
| | | <p><i>However, in order to prevent such an eventuality, the Appellant can be put on terms, as was done by the High Court while allowing his prayer for Anticipatory Bail.</i></p> <p>On the other hand, the learned Public Prosecutor vehemently opposed the prayer for bail and submitted this is a case where victims are helpless patients, undergoing treatment at AMRI, a premier hospital of the city of Kolkata against luxurious charges. He further submitted in the said incident 93 critically ill indoor patients were suffocated and died and condition of several other critically ill indoor patients deteriorated and they became more serious. He contended that this incident which claimed lives of 93 helpless innocent patients and caused immense sufferings to other indoor patients was due to the deliberate lackadaisical attitude of each of the charge-sheeted accused persons, including the present petitioners, who for their wrongful monetary gain refused to take minimum fire safety measures in the said hospital and in spite of repeated warning of the statutory authorities, they refused to eliminate the deficiencies. He contended that during investigation it reveals the place where the fire was first broke out was actually a parking space according to the sanction plan but at the behest of the petitioners the same has been illegally converted to a godown and huge quantity of inflammable and combustible materials were stored there. He further submitted in a case of this nature where 93 persons were killed and several others suffered severe bodily injuries the accused whose guilt has been prima facie established during investigation are not entitled to bail on the mere ground that investigation is over and charge-sheet has been submitted. He further contended since 455 witnesses are proposed to be examined during the trial that does not mean that the trial would continue for indefinite period. According to him the most of the documents the prosecution proposes to rely on are formal documents and not much time will be necessary to bring the same on record.</p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/3/12

No.

of 20

| Serial No. | Date | Notes and Orders |
|------------|------|--|
| | | <p>The learned Public Prosecutor to show the petitioners complicity, invited our attention to the statement of Rajesh Pareek, Anjani Kumar Mantri, Shakti Pada Deb, Sunil Jaiswal, Sanjay Kumar Basu, Suman Ghosh, Anannya Mitra, Jayanti Chatterjee and Maitali Basu and according to him those statements clearly goes to show that it was due to the reason of the present petitioners the aforesaid incident happened. He further contended that it is now clear from the materials collected during investigation that it is not one of such case where petitioners are the mere directors and have nothing to do in managing the day to day affairs of the company but it is one of such exceptional case as it transpires from the investigation that without the expressed consent and permission of the petitioners nothing could be done in the hospital even where there is a specific board resolution as regards to any particular issue. He contended even on petty issues the prior consent and permission of the charge-sheeted accused persons were always necessary. He further contended at the behest of the board of directors of AMRI Hospital, which includes the present petitioners, going beyond the sanctioned plan the parking space in the basement has been illegally converted to a medical shop and several small cubicles were constructed out of highly combustible materials viz. wooden bar and ply boards for their personal monetary gain and the safety of the in-hospital patients were completely ignored. He further contended earlier to this occurrence sometime in the month of October 2011 a fire broke out in the hospital when one of the employees of the hospital informed the fire brigade without the permission of these accused persons and he was suspended and simultaneously categorical instructions were issued to all the employees not to inform the fire brigade in case of any fire hazard in the hospital without their prior permission. According to the learned Public Prosecutor, Dr. Mani Chettri does not stand on same footing with the present accused persons who has been granted bail by the Court</p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/3/12

No.

of 20

| Serial No. | Date | Notes and Orders |
|------------|------|--|
| | | <p>below. He contended that Dr. Chettri, an old medical practitioner aged about 92 years, was granted bail completely on compassionate ground as he was seriously ill and was in I.C.C.U. at S.S.K.M. Hospital. He submitted that already they have moved the Apex Court for cancellation of bail granted to the accused S.K. Agarwal by this Court and the State is going to challenge the order of granting bail to the accused Dr. Pronob Dasgupta. He contended that the petitioners cannot be permitted once again to raise the same question that no offence has been made out against them on the materials collected during investigation on the face of the findings of this Court in this regard on the earlier occasion. Lastly, he submitted that the decisions cited by the learned Counsel of the petitioners has no manner of application because in the first case the bail was granted to the accuseds after the framing of charge and in the next one on a different consideration. Therefore those cases is of no help to the petitioners.</p> <p>In reply Mr. Pradip Kumar Ghosh, Senior Advocate submitted before us that there is further development in the matter and one of the co-accuseds Dr. Satyabrata Upadhyay, Vice-President (Project) and the Chairman of the Fire Safety Committee has been granted bail on March 16, 2012 by the learned Sessions Judge, In-charge, 24-Parganas (South) after his detention in custody for 95 days.</p> <p>The Photostat copy of the certified copy of the said order filed before us is taken on record.</p> <p>4. We have given our anxious and thoughtful considerations to the rival submissions of the parties. We have gone through the police papers containing the materials collected against the petitioners during investigation and proposed to be used against them in the trial. We have also taken into account the decisions of the Apex Court cited before us.</p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/3/12

No. of 20

| Serial No. | Date | Notes and Orders |
|------------|------|--|
| | | <p>5. In the present case there is no controversy over the following issues;</p> <p>(i) Both the petitioners are in custody for 111 days.</p> <p>(ii) The investigation is over and charge-sheet has been submitted against the 16 accused persons.</p> <p>(iii) According to the charge-sheet 455 witnesses were proposed to be examined during the trial and several documents to be exhibited.</p> <p>(iv) Out of charge-sheeted accuseds, the co-accuseds Dr. Mani Chettri, the Managing Director of AMRI Hospital, one of the Directors Dr. Pronob Dasgupta and the Vice-President (Project) and the Chairman, Fire Safety Committee Dr. Upadhyay have been granted bail by the Trial Court and State never challenged the said order before any higher forum.</p> <p>(v) One another Director Mr. R. S. Agarwal has been granted bail by this Court, although the State has filed SLP against the said order but the same is still awaiting admission.</p> <p>Now, coming to the prima facie evidentiary materials collected during investigation we find from the statement of the witnesses, viz. Rajesh Parcek, the Vice-President Operation and Company Secretary (page 1012 of the Case Diary), Anjani Kumar Mantri, Senior Manager Materials and Stores (page 1017 of the Case Diary), Dr. Prema Guha (page 1022 of the Case Diary), Mr. Sunil Jaiswal (page 1026 of the Case Diary), Vice-President Finance and Project, Dr. Suman Ghosh (page 1030 of the Case Diary), Vice-President Medical (Administration) and Medical Superintendent, Mrs. Kakali Mukherjee (page 1042 of the Case Diary), Assistant General Manager, Operation, Mrs. Maitali Bhattacharya, Senior Manger, Operation (page 1047 of the Case Diary), Mr. Nawal Kishore Bazaj, Senior Vice-President (page 1058 of the Case Diary) that the affairs of AMRI Hospital, a company incorporated under the Companies Act is not only managed by the Board of Directors like any other private limited company</p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/3/12

No.




of 20

| Serial No. | Date | Notes and Orders |
|------------|------|---|
| | | <p>but there is a Managing Committee consisting of 11 members and they are Prof. M.K. Chettri, Dr. Pronob Dasgupta, Dr. Naba Pal, Dr. Mitra Mustafi, Dr. Suman Ghosh, Dr. S. Upadhyay, Mr. D.N. Agarwal, Mr. S.K. Todi, Ms. Preeta Banerjee, Mr. Rajesh Pareek and Mr. N.K. Bajaj and such Managing Committee is more involved in looking after the day to day affairs of the said hospital. We further find that while the Board of Directors used to meet once in three months, the members of the Managing Committee used to hold their meeting on every Saturday at each weekend. According to those prosecution witnesses the overall activities of the hospital is controlled and managed by the said Managing Committee and all decisions about the activities of the hospital used to be taken by them in such weekly meetings. Therefore, it can logically be concluded that on the face of the aforesaid materials, the present petitioners are standing on much better footing than the bailed out accuseds, so far as they are concerned in managing the affairs of the AMRI Hospital. We further find from the materials on record although according to the learned Public Prosecutor the bail was granted to Dr. Chettri on compassionate ground but as pointed out by the learned Counsel for the petitioners we find both from the remand application as well as from the relevant order that although his prayer for bail was vehemently opposed from the side of the State but after the bail was granted to him no challenge was thrown against the same.</p> <p>Now, in the light of the decisions referred from the side of the petitioners and the decision of the Apex Court in the case of Jaganath Mishra v. C.B.I., reported in (1998) 9 SCC 611, in which the Apex Court granted bail to the former Chief Minister of Bihar, allegedly involved in the Fodder Scam case, on the ground the investigation was over and charge-sheet has been submitted and considering his period of detention in custody and taking into account the aforesaid materials available from the Case Diary as against the petitioners and</p> |

Notes : Office notes should be one serial in black ink and judicial orders another in red ink.

28/3/12

No. of 20

| Serial No. | Date | Notes and Orders |
|------------|------|---|
| | | <p>further facts that four other co-accused than whom the present petitioners appears to be standing on better footing and having regards to the number of accuseds sent for trial and the witnesses to be examined in support of the prosecution case, it is not likely that their trial be concluded shortly, we allow the petitioners' prayer for bail.</p> <p>Let the petitioners' be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Alipore on furnishing a P.R. Bond of Rs. 20,000/- each of two sureties of Rs. 10,000/- each and on further condition that after release they shall not enter within the territorial limit of the police station within which the AMRI Hospital is situated and on further condition that they will not tamper with the evidence and must be present before the Trial Court on each day unless prevented due to justifiable reasons. We also direct that before release the petitioners' shall deposit their respective passports, if they possess to the concerned Court.</p> <p style="text-align: right;">  (Ashim Kumar Roy, J.)  (Ashim Kumar Roy, J.) </p> <p style="text-align: right;">  </p> |

CR-7498

Certified to be a true copy

Sonir Kumar Chawabody
Assistant Registrar / Section Officer
High Court, Appellate Side, Calcutta
Authorised under section 76 of the
Indian Evidence Act. 1872
(Act 1 to 1872) *28/3/12*



- 1) Date of application for certified Xerox Copy *28/3/12*
- 2) Date of notifying the Charges *28/3/12*
- 3) Date of putting in charges in Court free Stamp *28/3/12*
- 4) Date of which the certified Xerox Copy was ready for Delivery *28/3/12*
- 5) Date of Making over the certified Xerox Copy to the Applicant. *28-3-12*