

Case No. RC-10 of 2017

Order No.59
17.05.2021

The accused Firhad Hakim @ Bobby Hakim, Subrata Mukherjee, Madan Mitra and Sovan Chatterjee have been arrested in connection with the present Case and they have been detained in the Nizam Palace the regional head quarter of CB.I and on behalf of the prosecution one prayer has been made through email as well as on my personal Whats app to produce the arrested person before this learned court in person and accordingly, they have made a prayer for virtual hearing and that prayer has been allowed with the consent of the defence counsel who have appeared before this learned court and they agreed to join the virtual mode hearing on their personal laptop or mobile phone. Since, both the prosecution and accused persons have agreed to hear the matter regarding the arrest and the bail prayer made by the respective accused persons through virtual mode in assistance with the logistic support of the Learned Chief Judge, City Sessions Court and also in assistance with the System Assistant and D.S.A, the matter relating to bail matter is heard through virtual mode.

The accused persons were taken into custody and remanded to J/C. till 31.05.2021.

On behalf of accused Sri Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee and Sovan Chatterjee separate bail applications have been filed along with various documents in respect of their treatment for recent COVID-19.

At the very outset of the argument, Ld. Special Prosecutor, C.B.I has pointed out that the original F.I.R has already been submitted before this learned court and investigation of the present Case has been completed against Sri Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee, Sovan Chatterjee and SMH Mirza and the same has been substantiated the allegation the F.I.R against the accused Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee, Sovan Chatterjee and SMH Mirza for commission of offence u/s. 109 of I.P.C r/w Section 11 and 13(2) r/w 14(1)(d) of P.C Act. The I.O has obtained the

sanction of the prosecution against Sri Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee, Sovan Chatterjee and SMH Mirza issued by the competent authority. Ld. Prosecution also stated that further investigation is opened as against the other accused persons namely, Mukul Roy, Apurapa Podder, Subendu Adhikary, Sougat Roy, Kakoli Ghosh Dastidar, Prasun Banerjee and Iqbal Ahmed. The Ld. Prosecutor during course of argument stated that they are praying for judicial custody of the arrested accused persons Sri Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee and Sovan Chatterjee since, they are very much influential and threatening the complainant and the witnesses on each and every occasion with dire consequences.

Against the said argument on behalf of the Subrata Mukherjee, Madan Mitra and Firhad Hakim, Mr. Kalyan Banerjee stated virtually that the sudden arrests of the petitioner is totally uncalled for and latent violation of law. There was no prior notice ever given to the petitioner prior to the arrest which tantamounts the violation of the relevant provision of law and in such circumstances the petitioner could not have been legally detained in violation of guidelines specifically laid down by the Hon'ble Supreme Court of India. The Hon'ble Apex Court in Sua moto W.P No. 01 of 2021 has categorically directed that no arrest can be made or detained in this raising COVID-19 pandemic period for the offence punishable under seven years and that decision is binding on the present case. Not only that the Hon'ble Apex Court in a case of non granting of bail categorically directed that however grave the charges might be, considering the devastating effect of the COVID-19 pandemic the police should released and such bail should be granted. In addition to that the Ld. Senior Counsel has categorically stated that Madan Mitra, Firhad Hakim and Subrata Mukherjee are all aged persons and are highly susceptible of COVID-19 due to their co morbidities and amongst them Madan Mitra has already been suffered from COVID-19 and his condition was so grave that his death might occurred but by the grace of god he has been recovered from COVID-19 very recently and is very much weak at the present time. Not only that the sanction which has been taken for submission of prosecution report as against the present arrested person is not taken as per law. The sanction so granted by the Hon'ble Governor for prosecution as

against the arrested persons where there was no opinion of the cabinet of ministers including the Chief Minister of our state.

The Ld. Sr. Counsel again stated that the sanction which was granted by the Hon'ble Governor which was in violation of article 166(3) of the Constitution as well as 164 of the same. On 5th of May Government has found but the Governor without consent of the council of minister including the Chief minister of our state has accorded sanction on 7th of May for submission of prosecution which is arbitrary and against the law. There are so many decision of the Hon'ble Apex Court that when such type of sanction be granted for prosecution against the counsel of ministers which is bad in law and the Governor can not grant sanction for prosecution against the member of Legislative Assembly with out prior approval of the decisions of council of ministers. Not but the least the Ld. Senior Counsel stated when charge sheet has been submitted against the arrested accused persons and investigation is over there can not be any ground for their detention and the accused person should be granted bail on any condition as deem fit and proper by this Ld. Court.

On behalf of accused Sovan Chatterjee, Ld. Senior Counsel stated that suddenly his client has been apprehended by the C.B.I neither there was any prayer before him by the investigating agency about any non cooperation nor there is any chance of absconsion on his part in any way as he has permanent residence in Calcutta. Not only that Mr. Sovan Chatterjee is very much ill at present. He is a high diabetic patient and his medication is going on. The accused is an aged person and ailing and if he has been detained in jail there is every possibility of contamination of diseases namely Pandemic COVID-19 which could endanger to his life. Since, Charge Sheet has already been submitted against the accused persons along with Sovan Chatterjee there is no necessity of further detention which seeks by the C.B.I.

Against the said argument, on behalf of the C.B.I, it has been categorically stated that only for completion of investigation can not be the ground for bail when the accused person is highly influential with in the state and they have the antecedent of such threatening as against the complainant and the witnesses. The accused persons are the heavy weight in respect of political affairs

and they have every capability to threaten the complainant and the witnesses. So that they may not express the truth before the Hon'ble Court. Accordingly the Ld. Spl. Prosecution for CBI vehemently opposes the prayer for bail as it has been prayed by the accused person. The Ld. prosecution thereafter sent some reported cases of Hon'ble Apex Court in virtual mode in support of his contention. One application has been filed on behalf of the C.B.I for adjournment of the present case today on the ground that they are intending to file written notes of objections in respect of the argument as advance by the Ld. Advocates for the accused persons. That prayer is considered and rejected since I have heard elaborately the both side on virtual mode and I do not find any ground for further hearing of the present case.

Perused the bail applications filed by the accused persons and the Charge Sheet submitted by the I.O. and also going thorough the entire documents supplied by the accused persons along with the reported cases, I find that as against the accused Sri Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee and Sovan Chatterjee investigation has been completed. Though there is a prayer for further investigation as against other FIR named accused persons but on behalf of the I.O. there is no prayer for CBI custody of the arrested persons. On the other hand there is recent judgment of the Hon'ble Apex Court has held over crowding of prison a phenomenon, playing several countries including India. Some prison are might not be willing to be released in view of their social background and the fear of becoming victims of the deadly virus. The Hon'ble Apex court is also of the view of that the over crowding of the accused in the prison might have an effect of the infection of the COVID-19 which should not be encouraged and accordingly, the Hon'ble Apex Court has directed the authorities concerned to deconjest the prison for avoiding the infection in between the inmates. Over and above when the purpose of investigation has already been completed as against the arrested persons Sir Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee and Sovan Chatterjee and where there is no prayer for C.B.I custody for further interrogation, mere prayer for judicial custody can not be the ground for detention of the arrest persons. I think what ever prayer has been made by the I.O in respect of the present case should not be entertained on the other hand what ever prayer has been made in respect of bail of the accused

Sir Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee and Sovan Chatterjee should be allowed.

Considering all these aspects the accused persons namely Sir Madan Mitra, Firhad Hakim @ Bobby Hakim, Subrata Mukherjee and Sovan Chatterjee granted interim bail of Rs. 50000/- each with two sureties of Rs. 25000/- each on condition they must cooperate the I.O in respect of further investigation of the present case as and when he will called them and they shall also meet the I.O once in a fortnight until further order with the satisfaction of the Ld. C.M.M Calcutta. in-default, they will suffer judicial custody till 31.05.2021.

If on bail to-date for appearance of the accused persons and further report.

Let the copy of the order be sent to the email Id of each participants including the C.B.I and the hard copy of this order be sent to the Ld. C.M.M Calcutta for information and necessary action.

D/C by me
Sd/-
Anupam Mukherjee (WB00605)
Judge,
Spl.C.B.I Court No.1
City Sessions Court,
Bichar Bhawan, Calcutta

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