

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Arijit Banerjee**

And

The Hon'ble **Justice Prasenjit Biswas**

C.R.M. (DB) No. 1580 Of 2024

Arabul Islam

-Versus-

The State of West Bengal

For the Petitioner : **Mr. Y. J. Dastoor, Sr. Adv.,
Mr. Phiroze Edulji,
Ms. Roustavi Mukherjee,
Ms. Priyanka Bhattacharya,
Ms. Soumili Choudhury.**

For the State : **Mr. Kishore Datta, Ld. Advocate General,
Mr. Rudradipta Nandy,
Mr. Sanjana Saha.**

CAV On : **20.06.2024**

Judgment on : **02.07.2024**

Prasenjit Biswas, J: -

1. This is an application filed on behalf of the accused petitioner Arabul Islam seeking bail in connection with Bijoygunj Bazar Police Station Case No. 23/2024

dated 06.02.2024 corresponding to G.R. Case No. 761/2024 which was registered earlier as Kashipur Police Station Case No. 276/2023 dated 16.06.2023.

2. The instant criminal case was started on the basis of a suo-motu complaint lodged by one SI of Police of erstwhile Kashipur Police Station stating inter alia that on 15.06.2023 at about 13:15 a huge number of members and supporters of two rival political parties were engaged in a commotion in between themselves at several places at Nimkuria, Ganerite, Kanthadanga, Kanthalia, 91 Bus Stand, Panapukur More Panapukur Mela More, Bijoygunj Bazar situated under the jurisdiction of the then Kashipur Police Station on the issue of submitting nomination form for ensuing Panchayet Election, 2023. It is stated that the members of both the groups formed unlawful assemblies by violating the order under Section 144 of Cr. P. C. prevailing in that area armed with deadly weapons like Lathis, Iron Rods, Tangi, Hasua, Brickbats, crude bombs, fire arms with them. The members of those two political parties who were present at the place of occurrence started to commit physical assault upon one another and also set fire on government and private properties like vehicles, shops etc. The accused persons named in the FIR also physically assaulted the police persons who were on duty on that date and also hurled bombs at them with intention to prevent the government servants from discharging their duties as well as with intention to inflict fatal injuries upon them. In the said incident some of the police personnel who were on duty received injuries to their persons. Over the said alleged incident the instant written complaint was lodged by the de-facto complainant being Kashipur Police Station Case No. 276/23 dated 16.06.2023 registered under Sections 147/ 148/ 149/ 186/ 188/ 189/ 332/ 353/ 307/ 427/ 435/ 504/ 506 of the Indian Penal Code, 1860, Section 9 of the West Bengal Maintenance of Public Order Act, 1972, Sections 3/ 4 of the Prevention of Damage to Public Property Act, 1984,

Sections 25/ 27 of the Arms Act, 1959 and Sections 3/ 4 of the Explosive Substances Act, 1908 against unknown miscreants for investigation. Section 302 of the Indian Penal Code was subsequently added to this case. On the basis of the complaint, investigation was started and police visited the place of occurrence and also seized incriminating articles which were allegedly used by the accused persons on the date of the incident. Witnesses were examined in the course of investigation by the police and their statements were recorded under Section 161 of Cr.P.C. It is stated that in the course of investigation it was revealed that the accused persons set fire on 13 numbers of different vehicles. It has further been stated that on the said date of incident one victim namely Mahiuddin Molla received gunshot injury on his head and was taken to Jirangachha Rural Hospital where he was declared as 'brought dead' by the doctor. Thereafter inquest and post-mortem examination of the victim was held and it would appear from the report of the post mortem that the death of the victim was due to effects of head injury caused by fire arm which is ante mortem and homicidal in nature. Over the incident a UD case being Kashipur UD case No. 10/23 dated 16.06.2023 was started. Thereafter a complaint was lodged by the father of the deceased victim before the Kashipur Police Station wherein it is stated that on the fateful day of the incident when he was going to Bhangar II BDO office, then on his way the said victim along with other persons were attacked by the miscreants under the leadership of the present accused petitioner namely Arabul Islam and Julfikar Molla by pistol and other weapons. The victim received gunshot injury on his head and died instantly on the spot.

3. It is further stated that two persons namely, Amirul Molla and Monirul Molla also received gunshot injury during the commotion on the same date of incident at Panapukur More and both of them were subsequently admitted to a hospital at

Kolkata for their treatment. Thereafter on 23.06.2023 further investigation was taken up by the Criminal Investigation Department, West Bengal and on 01.07.2023 the case was again transferred to the Kashipur police station for the purpose of further course of investigation. In course of investigation in connection with this case 3 accused persons namely Khalek Ali Molla, Jahan Ali Khan @ Kangal and Ajar Mondal were arrested for their direct complicity in the present case. Subsequently, another accused person namely Suburali Molla was also arrested in connection with this case. In pursuance of statements made by one of the accused persons country made fire arms along with one live cartridge were also recovered and seized which were subsequently sent to SFSL for examination and for obtaining report. During investigation statements of the witnesses to the incident were recorded under Section 164 of Cr.P.C. by the learned Judicial Magistrate from which it appeared that on the fateful day, the said incident was orchestrated on the instruction of the present accused petitioner. It has further been stated that the erstwhile Kashipur Police Station was incorporated into the jurisdiction of Kolkata Police Station and divided into two new Police Stations i.e. Bijoygung Bazar Police Station and Uttar Kashipur Police Station under Bhangar Division of Kolkata Police. As a result a new FIR being Bijoygung Bazar P.S Case No. 23/24 dated 6.02.2024 under Sections 147/ 148/ 149/ 186/ 188/ 189/ 332/ 353/ 307/ 427/ 435/ 504/ 506 of the Indian Penal Code, 1860, Section 9 of the West Bengal Maintenance of Public Order Act, 1972, Sections 3/ 4 of the Prevention of Damage to Public Property Act, 1984, Sections 25/ 27 of the Arms Act, 1959 and Sections 3/ 4 of the Explosive Substances Act, 1908 with added Section 302 of IPC was indexed on the basis of Formal FIR of Kashipur Police Station Case being No. 276/2023 dated 16.06.2023 registered under Sections 147/ 148/ 149/ 186/ 188/ 189/ 332/ 353/ 307/ 427/ 435/ 504/ 506 of the Indian Penal Code,

1860, Section 9 of the West Bengal Maintenance of Public Order Act, 1972, Sections 3/ 4 of the Prevention of Damage to Public Property Act, 1984, Sections 25/ 27 of the Arms Act, 1959 and Sections 3/ 4 of the Explosive Substances Act, 1908 against unknown miscreants for investigation.

4. After completion of investigation police submitted charge sheet against this accused petitioner along with other accused persons being charge sheet no. 43/2024 dated 07.05.2025 under Section 147/ 148/ 149/ 186/ 188/ 189/ 332/ 353/ 307/ 427/ 435/ 504/ 506 of the Indian Penal Code, 1860, Section 9 of the West Bengal Maintenance of Public Order Act, 1972, Sections 3/ 4 of the Prevention of Damage to Public Property Act, 1984. This accused petitioner was arrested on 09.02.2024 and since then he has been languishing in custody.

5. Mr. Y. J. Dastoor learned Senior Advocate appearing on behalf of the accused petitioner submitted that this accused petitioner has been falsely charged with the crime. He is absolutely innocent and has/had no connection with the offence alleged. Mr. Dastoor further submitted that the present accused petitioner has not been named in the First Information Report being Bijaygunj Bazar Police Station Case No. 23/24 dated 06.02.2024 and his name transpired subsequently during the course of investigation. It was further submitted by learned Counsel that this accused petitioner has been impleaded as an accused in connection with several criminal cases which are pending in different police stations. In the application for bail filed by this accused petitioner the particulars of all those cases have been set out. It was stated that this petitioner was arrested in connection with Bhangore Police Station Case No. 785/2022 dated 07.12.2022 and in connection with Hatishala Police Station Case No. 60 of 2024 dated 21.02.2024 (earlier registered as Kashipur Police Station Case No.

575/2023 dated 09.12.2023) and in all those cases this accused petitioner was granted bail by the learned Trial Court.

6. Mr. Dastoor, learned Senior Advocate, submitted that other accused persons who were arrested in connection with Kashipur Police Station Case No. 276/2023 dated 16.06.2023 were granted bail by the learned Trial Court by order dated 12.09.2023 in connection with Criminal Misc. Case No. 638 of 2023. It was further submitted that a writ application was taken out by the wife of this accused petitioner being W.P.A. No. 9396 of 2024 before this Court with a prayer for giving direction upon the respondent authority in that case being the Commissioner of Police, Kolkata and the Director General and Inspector General of Police, West Bengal to furnish information regarding the total number of criminal cases which are pending against the accused petitioner. The said writ petition has been disposed of by the Writ Court. It was further pointed out by learned Counsel that the present accused/petitioner was also arrested in connection with Hatisala Police Station Case No. 106 of 2024 started under Sections 341/ 323/ 427/ 506/ 307/ 114 of the Indian Penal Code read with Sections 25/ 27 of the Arms Act and Sections 4 and 5 of the Explosives Substances Act but he was enlarged on bail in connection with that case also.

7. It was further submitted on behalf of the accused petitioner that on 07.05.2024, the Officer-In-Charge of Bijoyganj Bazar Police Station prayed before the learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas, for permission to interrogate this accused petitioner in connection with Bijoyganj Bazar Police Station Case No. 105/2024 dated 04.05.2024 started under Sections 147/ 148/ 149/ 326/ 307 of the Indian Penal Code, 1860 and Sections 25/ 27 of the Arms Act, 1959 and lodged by one Bahauddin Molla stating that on 13.06.2023 at about 11:00 AM, members of two political parties assembled and on the instruction of this

accused petitioner the other accused persons who were present at the spot started to shoot and also hurl bombs at the members of the other political party and as a result the informant suffered injury in the gunfire and was taken to local hospital where from he was referred to R.G. Kar Hospital, Kolkata and he was under treatment for several days. Several other persons were also injured in the said gunfire. It was stated by the learned Counsel that over the selfsame incident Kashipur Police Station Case no. 271 of 2023 dated 13.06.2023 (now renumbered as Bijoyganj Bazar Police Station No. 55 of 2024) under Sections 341/ 325/ 307/ 34 of the IPC was registered for investigation based on a complaint lodged by one Monowari Bibi. The said Kashipur Police Station was subsequently brought under Kolkata Police and renamed as Bijoyganj Bazar Police Station. As per submission of learned Counsel, from the Injury Certificate of the complaint Bahauddin Molla it would appear that this present petitioner has been falsely implicated in the instant case out of political vendetta.

8. It was further submitted by learned Counsel that all the allegations as leveled against this accused petitioner are baseless and there is no factual foundation whatsoever and his incarceration is not warranted at all in the facts and circumstances of the present case.

9. Our attention was drawn by learned Counsel to the fact that Md. Sufiyan Molla who was examined under Section 164 of the Code of Criminal Procedure and arrested on 16.11.2023 in connection with Kashipur Police Station Case No. 535 of 2023 dated 16.11.2023 was also enlarged on bail on 15.12.2023.

10. In support of his contention learned Counsel cited the following decisions:

- I. ***Prabhakar Tewari Vs. State of Uttar Pradesh And Another*** reported in **(2020) 11 Supreme Court Cases 648**

II. ***P. Chidambaram Vs. Directorate of Enforcement*** reported in **(2020) 13 Supreme Court Cases 791**

III. ***Jaibunisha Vs. Meharaban And Another*** reported in **(2022) 5 Supreme Court Cases 465**

IV. ***Budhpal @ Buddhu Vs. State of U.P.*** reported in **2014 SCC OnLine ALL 14815**

11. Emphasis was put by learned Counsel on the decision rendered by the Hon'ble Apex Court in the case of ***P. Chidambaram*** wherein Hon'ble Apex Court made observation at the time of granting regular bail sought by the appellant under Section 439 Cr. P.C. that the following factors would be taken into consideration:

I. The nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

II. Reasonable apprehension of the accused person tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

III. Reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

IV. Character, behavior and standing of the accused and the circumstances which are peculiar to the accused; and lastly

V. Larger interest of the public or the State and similar other considerations.

12. In that case Hon'ble Apex Court held that the other aspect for consideration is as to whether the further consideration made by the learned Judge of the High Court, despite holding the triple test in the appellant's favour, was justified and if such

further consideration is permissible, whether the learned Judge was justified in his conclusion. As per submission of learned Counsel, at the time of disposing of the application for bail filed by this accused petitioner the guideline as made by the Apex Court should be kept in mind.

13. At the time of hearing, learned Counsel drew attention of this Court to statements of witnesses recorded under Section 161 Cr.P.C in connection with this case. It was stated that the witnesses in their statements said the same thing without ascribing specific role to this applicant. It was submitted that till date this applicant has not suffered conviction in any of the cases pending against him and in most of the cases he was granted bail by the Trial Court. It was submitted that there is no possibility of the applicant absconding or tampering with witnesses and if he is enlarged on bail he shall not misuse the liberty of bail.

14. Per contra, Mr. Kishore Dutta, learned Advocate General, opposed the prayer for bail of the applicant by contending that the present applicant is a history sheeter and several criminal cases are pending against this accused petitioner. It was submitted that the innocence of the applicant cannot be adjudged at this pre-trial stage and therefore, he does not deserve any indulgence. At the time of hearing learned Advocate General submitted a list showing that the following cases are pending against this accused petitioner. The chart of the said cases is reproduced below:

Sl. No	Police Station	Case No.	Date	Under Section
1	Bijoygang Bazar	23	06.02.2024	147/148/149/186/ 188/ 89/332/353/307/427/435/504/506 IPC & 9 MPO Act & ³ / ₄ ES Act & Adding Section- 302 IPC

2	Kashipur	165	12.05.2018	147/148/149/326/307/302/354/427 IPC
3	Kashipur	303	20.06.2016	147/148/149/323/324/325/326/307/379/34 IPC & 25/27 Arms Act & 3/4 ES Act
4	Kashipur	373	26.07.2016	u/s 326/307/120B/ 34 IPC & 25/27 Arms Act
5	Bijoygang Bazar	37	18.02.2024	u/s 143/341/326/307/120B IPC & 25/27 Arms Act
6	Hatisala	60	21.02.2024	u/s 143/186/307/506/120B IPC
7	Bhangore	785	07.02.2022	448/307/120B IPC & 25/27 Arms Act
8	Bhangore	134	18.12.2006	147/148/149/186/323/325/337/338/307/353/447/427 IPC
9	Hatisala	106	05.04.2024	341/323/427/506/307/114 IPC & 25/27 Arms Act & 4/5 ES Act
10	KLC	11	09.01.2013	147/148/149/323/325/326/307/427/506/435 IPC & 25/27 Arms Act & 9B IE Act
11	Bhangore	186	31.10.2007	147/149/332/333/353 IPC
12	Bhangore	189	02.11.2007	147/149/323/506 IPC
13	KLC	8	06.01.2013	148/149/341/323/325/427/506 IPC & 25/27 Arms Act & 9B I E Act
14	Kashipur	240	20.05.2016	447/427/379/506/34 IPC & 25/27 Arms Act & 3/4 ES Act
15	Kashipur	611	21.12.2016	447/506/34 IPC
16	Kashipur	157	06.05.2018	365 IPC
17	Bijoygang Bazar	M-1059	02.03.2024	110 CrPC

15. It was submitted by learned Advocate General that on perusal of the said list it would appear that this accused petitioner is a history sheeter and he is involved in heinous offences and as such this accused petitioner is rightly considered to be a history sheeter. It was further submitted that in case the applicant is released on bail, he will again indulge in similar activities. He is a criminal history sheeter and thus his

prayer for bail should be refused although the co-accused persons in connection with the case have been released on bail.

16. At the time of hearing, attention of the Court was drawn by learned Advocate General to Paragraphs 8.9,10 and 13 of the decision rendered by the Hon'ble Apex Court in the case of **Neeru Yadav (Infra)** wherein Hon'ble Apex Court indicated the factors to be considered at the time of granting bail to the accused person. Our attention was drawn to paragraph 13 of the said report which reads as follows-

“13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:

“Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere; and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.”

17. It was stated by learned Advocate General that in the case of **Neeru Yadav (Infra)** it was held by the Apex Court that a history sheeter involved in heinous crimes cannot be granted bail only on the ground of parity with the other accused persons who were granted bail in connection with the case. It was further submitted by learned Advocate General that in the case of **Neeru Yadav (Infra)**, the High Court granted bail to the accused ignoring his criminal antecedents and particularly bail was granted on the doctrine of parity. Subsequently, the order granting bail was assailed before the Supreme Court and the order passed by the High Court was set aside on the ground that the accused in that case had criminal antecedents and was a history sheeter. Learned Advocate General further submitted that the decision rendered by the Hon'ble Apex Court in the case of **Neeru Yadav (Infra)** is clearly applicable in this present case as there are several criminal cases pending against this accused petitioner in different police stations. This accused person, if released on bail, could well be a nuisance to the collective.

18. It was further submitted by learned Advocate General that there is sufficient incriminating material on record which show prima facie involvement of the accused petitioner with the alleged offence. Learned Advocate General drew our attention to the statements of the witnesses recorded under Section 161 of Cr.P.C as well as the statement recorded under Section 164 of Cr.P.C in connection with this case. To buttress his submission learned Advocate General referred to the following decisions rendered by the Hon'ble Apex Court:

- I. ***Neeru Yadav Vs. State of Uttar Pradesh and Another*** reported in **(2016) 15 Supreme Court Cases 422**

II. ***Chandrakeshwar Prasad Alias Chandu Babu Vs. State of Bihar And Another*** reported (2016) 9 Supreme Court Cases 443

III. ***Ash Mohammad Vs. Shiv Raj Singh Alias Lalla Babu And Another*** reported in (2012) 9 Supreme Court Cases 446

19. It was argued by learned Advocate General that from the above referred cases of the Hon'ble Supreme Court it would appear that criminal antecedents of the petitioner is an important factor which cannot be ignored while deciding the bail petition. It is an established fact that a crime though committed against an individual, in all cases does not retain an individual character. It on certain occasion accentuates and causes harm to the society. The victim may be an individual but in the ultimate eventuate it is the society which is the victim. As per his submission a crime as is understood creates a dent in the law and order situation in a society and it disturbs orderliness and affects peaceful life in the society. It was further submitted that the law in regard to grant or refusal of bail is well settled and the Court should exercise its discretion in a judicious manner.

20. The attention of this Court was drawn to paragraph nos. 3, 14 and 15 of the decision rendered by the Hon'ble Apex Court in the case of **Chandrakeshwar Prasad Alias Chandu Babu** wherein the bail granted by the High Court was set aside and the State was directed to take all consequential steps inter alia for taking the accused in custody forthwith.

21. Our attention was drawn by learned Advocate General to the decision rendered by the Hon'ble Apex Court in the case of **Ash Mohammad** wherein the accused who was a history sheeter with 30 serious criminal cases pending against him and instrumental in kidnapping the victim under threat and for confining and torturing

him in confinement was granted bail by the High Court. In that case State filed an application before the Hon'ble Apex Court with a prayer for cancellation of the bail and in disposing of the said case the Hon'ble Apex Court held that granting of bail is a matter of discretion and the Supreme Court is slow to interfere with such order but regard being had to antecedents of the accused, nature of the crime committed and confinement of the victim for 8 days, interference is required in the matter of granting bail to the accused as the High Court had ignored the criminal antecedents of the accused. The order of bail granted by the High Court was cancelled by the Supreme Court. Learned Advocate General drew our attention to paragraph 29 of the said decision rendered by the Apex Court which interalia reads as follows:

“Be it noted, a stage has come that in certain States abduction and kidnapping have been regarded as heroism. A particular crime changes its colour with efflux of time. The concept of crime in the contextual sense of kidnapping has really undergone a sea change and has really shattered the spine of the orderly society. It is almost nauseating to read almost every day about the criminal activities relating to kidnapping and particularly by people who call themselves experts in the said nature of crime.”

22. Learned Advocate General submitted that applying the law laid down by the Apex Court as referred to above and the facts of the case in hand and more particularly considering the fact that the present petitioner accused is a history sheeter and is having criminal antecedents and is allegedly involved in the murder of the victim and also taking note of the gravity and the nature of the offence, loss of human lives, its impact on the society as well as fabric of the society and his continuous involvement in criminal activities, the present accused petitioner should

not be enlarged on bail as the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused.

23. In reply, Mr. Dastoor, learned Counsel appearing on behalf of the accused petitioner, submitted that in **Neeru Yadav's** case accused had already suffered conviction and appeal against that conviction was pending before the Court but in the present case this accused petitioner has not been convicted in any of the cases pending against him. Moreover, in most of the cases he was granted bail. So, the facts and circumstances of the present case are quite different from those in the case of **Neeru Yadav**. It was further submitted by Mr. Dastoor that in the case of **Ash Mohammad**, bail was granted by High Court to the accused which was subsequently challenged with a prayer for cancellation of bail before the Supreme Court and the bail granted by the High Court was set aside and the accused was directed to surrender to the custody forthwith. So, the decisions rendered in case of **Ash Mohammad** will not also be applicable in the present facts of the case. It was then submitted by Mr. Dastoor, learned Counsel that in case of **Chandrakeshwar Prasad Alias Chandu Babu**, Hon'ble Apex Court cancelled the bail granted by the High Court and in that case also 60 odd cases and appeals against conviction in some of the cases were pending before various Courts in Bihar as well as in the High Court. But no conviction has been suffered by the present accused petitioner in any of the cases pending against him. So, the facts of the case of **Chandrakeshwar Prasad Alias Chandu Babu** are quite different from the facts of the present case.

24. We have anxiously considered the rival submissions advanced on behalf of the parties and perused all the documents annexed with the records.

25. Indubitably though we find that several criminal cases including the present case are pending against this accused petitioner, yet in most of the cases this accused

petitioner has been granted bail. We are not unmindful of the decision rendered by the Hon'ble Apex Court in case of **Prabhakar Tewari Vs. State of Uttar Pradesh and Another** reported in **(2020) 11 Supreme Court Cases 648** wherein the Hon'ble Apex Court has observed that pendency of several criminal cases against an accused by itself cannot be a basis for refusing to grant bail. The same can be one of the factors, but not the sole basis for refusal of prayer for bail. It is not the case of the State that the applicant might tamper with or otherwise adversely influence the investigation or that he might intimidate witnesses before or during the trial. Admittedly even though charge sheet is filed it is likely to take more time before trial can start. It is not alleged by the State that the applicant has tried to jump the bail in any of the cases where he has been granted bail earlier by the Courts.

26. The State has also not placed on record any material to show that in the past the present accused petitioner has attempted to evade the process of law.

27. In case of **Ash Mohammad Vs. Shiv Raj Singh Alias Lalla Babu And Another** reported in **(2012) 9 Supreme Court Cases 446** the Hon'ble Apex Court observed interalia that:

“We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked.”

So, if the accused is otherwise found to be entitled to bail he cannot be denied bail only on the ground of his criminal history, when no exceptional circumstances on the basis of criminal antecedents have been shown on behalf of the State to deny bail to the accused person.

28. We are not unmindful of the principle as enunciated by the Hon'ble Apex Court that the object of bail is not punitive but to secure the presence of the accused during the trial. The principle that bail is a rule and jail is an exception has been well recognized by the Apex Court more specifically on the touchstone of Article 21 of the Constitution of India. The said principle has been reiterated by the Hon'ble Apex Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.*** reported in ***(2022) 10 SCC 51.***

29. Learned Advocate General has not shown any exceptional circumstances which would warrant denial of bail to the applicant excepting his criminal antecedent. It has also not been alleged that incarceration of the applicant is required in order to prevent the applicant from tampering with evidence or to prevent him from extending any inducement or threat to any of the witnesses. Learned Advocate General for the State has not shown any material or circumstance that the accused petitioner is not entitled to bail in larger interest of the public or the State. It is settled principle of law that the object of bail is only to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or intimidating witnesses and the like have been shown by the State. Mere pendency of one or more cases against the petitioner accused itself cannot be treated as a criminal antecedent so as to deny bail to the petitioner by exercising the special power conferred on this Court by Section 439 of the Cr.P.C. We are told and shown that the present accused petitioner has been granted bail in most of the pending cases and there is no complaint of misuse of the bail conditions as imposed by the Courts. No materials or circumstances have been brought to the notice of this Court with regard to tampering of evidence or intimidating witnesses in previous criminal cases.

30. At the time of hearing Mr. Dastoor learned Senior Counsel appearing on behalf of the accused petitioner submitted that his client is a politician and is a member of a political party and was MLA of Bhangar Assembly Constituency from 2001 to 2006. From 2013 to 2018 this accused petitioner was the Chairman of Bhangar – II Panchayat Samity and from 2018 to 2023 he was the Vice Chairman of Bhangar – II Panchayat Samity.

31. The alleged incident happened on 15.06.2023 but immediately thereafter no step was taken by the police either to arrest or interrogate the petitioner. About 8 months later, one fine morning he was arrested on the basis of statements of witnesses recorded by the police. So it would be clear that initially the police had no intention to arrest or interrogate him. He was arrested after a long gap of happening of the incident.

32. Anyway, insofar as criminal antecedent of the applicant is concerned, the State has failed to produce any material that on any earlier occasion, after getting bail the present accused petitioner attempted to evade the process of law. The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because he or she is accused of committing an offence until the guilt is established beyond a reasonable doubt. All the cases referred to by the prosecution are factually distinguishable. It is not the case of the State that this petitioner has suffered conviction in any of the criminal cases pending against him. Rather he was granted bail by the Court at different times in most of the cases. Article 21 of the Constitution of India states that no one's life or personal liberty may be taken away unless the procedure established by law is followed and that procedure must be just and

reasonable. Learned Advocate General has not shown any exceptional circumstance which would warrant denial of bail to the applicant.

33. We are not unmindful that in determining whether or not to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal of bail exclusively lies within the discretion of the Court and the grant or denial is generally regulated to large extent by the facts and circumstances of each particular case. At the same time, right to bail of the accused person is not to be denied because of the sentiment of the community against the accused. The primary purpose of bail in a criminal case is to relieve the accused of imprisonment, to relieve the State of the burden of keeping him in the correctional home and at the same time to keep the accused constructively in the custody of the court, whether before or after conviction to ensure that he will submit to the jurisdiction of the court and be in attendance whenever his presence is required. So, there are two paramount considerations while considering a petition for grant of bail in the case of a non-bailable offence. Apart from the seriousness of the offence, the likelihood of the accused fleeing from justice and/or a tampering with the prosecution witnesses are the other factors. Both of them relate to ensuring of the fair trial of the case.

34. All the decisions of the Hon'ble Apex Court as cited on behalf of the State relate to cancellation of bail order granted by the High Court. The Hon'ble Apex Court has repeatedly held in numerous cases that the parameters for granting bail are altogether distinct from the parameters for cancelling the bail already granted. Rejection of bail in a nonbailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. The petitioner has not abused the liberty of bail granted to him in respect of the other cases. The State has not quoted

any instance to demonstrate that the accused petitioner tampered with or endeavoured to tamper with any witness, meted out any threat to any witness, tried to hide himself or hampered the investigation or the trial of the case. The court is mindful of the presumption of innocence in favour of the accused petitioner until proven guilty and the fundamental right to personal liberty enshrined in Article 21 of the Constitution of India.

35. In **Prabhakar Tewari (supra)** Hon^{ble} Apex Court held inter alia at paragraph 7 that-

“On considering the submissions of the learned counsel for the parties, having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in Mahipal [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118; (2020) 1 SCC (Cri) 558] for testing the legality of an order granting bail are absent in the order [Vikram Singh v. State of U.P., 2019 SCC OnLine All 5566] impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order [Vikram Singh v. State of U.P., 2019 SCC OnLine All 5566] of the High Court granting bail. This appeal is dismissed.”

36. We are not unmindful of the fact that detention of the accused pending trial cannot be punitive in nature as there is presumption of innocence in favour of the accused person. Moreover in the case of **Prabhakar Tewari** the Hon'ble Apex Court observed that the pendency of criminal cases against an accused itself cannot be a basis for refusal of bail. Further the applicant has been in custody for a considerable period of time and charge sheet has already been submitted and there is no hope of early conclusion of trial. Accordingly, without commenting on the merits of the case, we are of the opinion that the applicant is entitled to be enlarged on bail.

37. Taking note of the fact that the apprehension of the prosecution can be safeguarded by imposing suitable and stringent conditions, this criminal petition is allowed:

- I. The accused petitioner Arabul Islam shall be enlarged on bail on executing a bond of Rs. 2,00,000/- (Rupees two lakh) with two sureties for the like sum to the satisfaction of the Trial Court.
- II. The petitioner shall mark his attendance on every Sunday before the concerned Bijoygunj Bazar Police Station till the trial is concluded.
- III. The petitioner shall not tamper with the prosecution evidence directly or indirectly and also shall not pressurize or intimidate the prosecution witnesses.
- IV. The applicant shall make himself available before the Trial Court on each date of hearing fixed unless personal presence is exempted and/or the applicant shall make himself available for the interrogation of a police officer as and when required.

V. The petitioner shall not leave the jurisdiction of concerned police station without prior permission of the Trial Court.

VI. The applicant shall not commit any offence similar to the offence of which he is accused or suspected of having committed.

VII. It is also provided that the accused petitioner shall not come within the periphery of 200 meter from the house of the victim and shall not disturb the peace and tranquility of the family members of the victim and in case any disturbance takes place, recourse to law shall be taken by the parties.

38. In case of breach of any of the above referred conditions the Trial Court will be at liberty to cancel the bail granted to this accused without further reference to this Court.

39. It is clarified that the observations, if any, made in this judgment are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

40. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)