

**(2009) 03 CAL CK 0007****Calcutta High Court****Case No:** C.R.M. No. 3456 of 2009

In Re : Hamidul Rashid

APPELLANT

Vs

RESPONDENT

Date of Decision: March 24, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439

Hon'ble Judges: Tapan Mukherjee, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Utsab Ray Misra, for the Appellant; Rita Dutta, for the Respondent

**Judgement**

The Judgment of the Court was as follows:

1. This is an application u/s 439 of the Code of Criminal Procedure challenging an order dated 21st February, 2009, whereby the learned Sessions Judge rejected the prayer for bail.
2. It appears from the record that the petitioner was arrested on 21st December, 2008 and he was produced before the Court on the subsequent date, i.e. on 22nd of December, 2008 and he was remanded for custody and since then, he had been in custody without having found any charge against him.
3. The application for bail was filed on 20th February, 2009. However that application for granting bail was taken up on the subsequent date. Charge-sheet has been submitted on 21st February, 2009.
4. It is thus clear that by arithmetical calculation when the petitioner filed the application for bail, the charge-sheet was not submitted though 61 days expired. On the expiry of 62 days, keeping the application pending, charge-sheet was allowed to be submitted to frustrate the application. According to us, so also by the Apex Court, (see [Uday Mohanlal Acharya Vs. State of Maharashtra](#), charge-sheet filed subsequent to filing of the bail application does not frustrate the application for

granting bail. The learned Sessions Judge should have taken note of the fact and situation when the bail application was filed. Admittedly; on the date filing of the bail application charge-sheet was not submitted and the statutory period had expired.

5. In the circumstances, we hold that order rejecting the prayer for bail is not tenable. Accordingly, the same is set aside: We allow the prayer for bail.

6. Let the petitioner find bail with two sureties of equivalent amount; one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Barasat, on condition that he shall meet the concerned Officer-in-Charge thrice in a week.

7. In addition to the aforesaid conditions, he will deposit a sum of Rs. 20,000/- as cash security with the learned Chief Judicial Magistrate, Barasat. In the event, he does not misuse the condition of bail and cooperates with the learned Chief Judicial Magistrate, Barasat by attending himself as and when date is fixed for hearing, then the aforesaid amount shall be refunded to him irrespective of the result of the matter and if he misuses the condition of bail and does not co-operate with the learned Chief Judicial Magistrate, Barasat, the aforesaid amount will stand forfeited.

8. In the event of breach of any of the abovementioned conditions of bail, the order of bail shall automatically stand cancelled and the concerned Officer-in-Charge will take the petitioner in custody and produce him before the learned Chief Judicial Magistrate, Barasat without any further reference to this Court.

9. However, the petitioner must not leave his village Ghoragacha without permission of the learned Chief Judicial Magistrate, Barasat.

10. The petitioner is also directed to intimate the Investigating Officer as to his whereabouts and availability on the days when he is not required to meet.