

15.10.2020

Item No. 2
(ALLOWED)

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CRM 7511 of 2020

(Via video Conference)

In Re:- An application for bail under section 439 of the Code of Criminal Procedure in connection with Alipurduar P.S. Case No.379 of 2020 dated 18.08.2020 for committing offence punishable under Sections 143/188/379 and 506 of the Indian Penal Code, 1860 read with Section 51 of Disaster Management Act, 2005 read with Section 3 of Epidemic Diseases Act, 1897.

And

In the matter of : **Khitish Barman**

.....Petitioner

Mr. Arijit Ghosh

....For the Petitioner

**Mr. Biswarup Roy, Ld. Public Prosecutor-in-Charge,
Circuit Bench, Jalpaiguri.**

.....For the State

Heard the learned advocates appearing for the parties.

Petitioner undertakes to affirm and stamp the petition/application as per Rules within 48 hours of resumption of normal functioning of the court. Subject to such undertaking, the application is taken up for hearing through video conference.

The petitioner is in incarceration in jail for about fifty-three days since August 23, 2020. The allegation against the accused is under Section 379 IPC for theft of fishes from the river.

It has been frankly pointed out by the learned Public Prosecutor-in-Charge for the State at Jalpaiguri Circuit Bench through video link that the offence under Section 51 of Disaster Management Act, 2005 read with Section 3 of Epidemic Diseases Act, 1897 added sections for the offence alleged under Sections 143/188/379 and 506 of the Indian

Penal Code, 1860 is not tenable in view of the provision of Section 60 of Disaster Management Act, 2005 as no court shall take cognizance of an offence under the said Act except by a complaint made by National Authority, State Authority, Central Government, State Government, District Authority or any other authority or officer authorised in this behalf by that authority or Government. It is pointed out that three accused persons are still absconding and they have not yet been apprehended by the Investigating Officer.

Therefore, having heard learned advocate for the petitioner and so also the learned Public Prosecutor-in-Charge for the State at Jalpaiguri Circuit Bench through video link and considering the period of detention and no materials placed to convince the court for further detention of the accused, the petitioner shall be released on bail upon furnishing a bond of Rs. 25,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Alipurduar and on condition that the petitioner while on release shall attend before the Investigating Officer once in a week till the conclusion of the investigation.

Thus, CRM 7511 of 2020 is disposed of.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this court.

(Shivakant Prasad, J)