

04.12.2020

Ct. No. 12

Item no. 01

CRM 9348 of 2020

With
CRAN 1 of 2020

(Via Video Conference)

akd
&
ab

In Re:- An application for bail under section 439 of the Code of Criminal Procedure in connection with Domkol Police Station Case no. 608 dated 20.08.2019 under Sections 302/120B/34 of the Indian Penal Code read with Sections 25/27 of the Arms Act with Domkol Police Station Case no. 384 dated 16.06.2019 under Sections 302/34 of the Indian Penal Code along with Sections 25/27 of the Arms Act and Sections 3 and 4 of the Explosive Substances Act read with Section 9(b) of the Explosive Substances Act.

And

In the matter of : **Rajab Halsana @ Rajab Ali Halsana & Ors.**
...Petitioners

Mr. Sekhar Kumar Basu,
Mr. Navanil De.

...For the Petitioners

Mr. Rudradipta Nandy.

...For the State.

Mr. Sabir Ahmed,
Mr. Ali Ahsan Alamgir,
Ms. Rabia Khatoon.

... For the de facto complainant.

The Advocate on record of the petitioners 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 interlocutory application being CRAN 1 of 2020 is disposed of.

Mr. Basu, learned Senior Advocate for the petitioners, submits that the petitioners are in custody for nearly about one year and six months in connection with the abovementioned case having no direct complicity to the commission of a cognizable offence imposed upon them. He further submits that though the earlier application for bail filed by the present petitioners was rejected by this Court on 17th June, 2020, but subsequently the

co-accused, namely Ajay Ghosh, had been enlarged on bail by this Court by virtue of an order dated 1st December, 2020 passed in CRM 8871 of 2020. He strenuously submits that the petitioners are standing on the same footing as that of the said co-accused and, therefore, they are entitled to bail on the ground of parity.

The learned Advocate appearing for the State vociferously submits that the petitioners have been arrested in connection with the case registered for heinous crime and, in fact, committed murder of three persons, who were cited as witnesses, so that no evidence can be recorded against them. He further submits that the petitioners were involved in commission of such offence and, therefore, their release on bail would also impede the further progress of the trial or there is a fair chance of interfering therewith. However, it is candidly submitted that there is a community between the petitioners and the other co-accused, namely Ajay Ghosh in relation to the attribution of their role in complicity of such offence.

Mr. Sabir Ahmed, learned Advocate appearing for the de facto complainant intervenes and submits that if the petitioners are released on bail, there is every likelihood of interfering with the progress of the sessions trial and intimidation of the material witnesses, which may turn out to be a commission of an identical offence. He further submits that the petitioners are desperate in their attempts so that the witnesses cannot depose against them and, therefore, even if the petitioners stand on the same footing as that of Ajay Ghosh, they should not be released on bail. As a last resort, Mr. Ahmed submits that the State has preferred a Special Leave Petition challenging the order dated 1st December, 2020 passed in CRM 8871 of 2020.

After hearing the respective submissions and on perusal of the materials available from the case diary produced before us, it is undeniable that the earlier application for bail filed by the petitioners was rejected on 17th June, 2020 by this Court on a prima facie finding that the involvement of the petitioners in the alleged murder of the victims does not instill any sense of non-

complicity to such offence. The Court further observed that the co-accused, who was granted bail earlier, does not stand on the same footing as that of the other co-accused.

However, we notice the order dated 1st December, 2020 passed in CRM 8871 of 2020 filed by Ajay Ghosh, who undeniably being the co-accused in the said case. The Co-ordinate Bench observed that sharing of the common intention by an unlawful assembly might be assessed at the appropriate stage of the proceeding. We further notice the submissions made at the Bar on behalf of the petitioners that there was one of the accused, who fired at the victim, yet the Court find that the moment the investigation is complete and no further custodial interrogation is required, the petitioner is entitled to be released on bail.

As indicated above, more particularly the submission of the State in this regard is very much categorical to the effect that the said co-accused attributed the same role in complicity of the offence together with the present petitioners and, therefore, we do not find any justification in not allowing the instant application for bail on the ground of parity. Equally we cannot overlook the apprehension shown by the learned Advocate appearing for the de facto complainant that in absence of any condition to be imposed for grant of bail, there is every chance that the witnesses, who are within the jurisdiction of Domkol police station, may be threatened or intimidated so that the prosecution would fail in proving the guilt.

We appreciate such apprehension, but equally cannot overlook that the petitioners standing on the same footing as that of the co-accused should not remain in jail, when the other co-accused has already been enlarged or released on bail by this Court.

Accordingly, the petitioners, namely **Rajab Halsana @ Rajab Ali Halsana, Meherul Mondal @ Meherun Mandal and Kaosar Sekh @ Kawsar Sk.** shall be released on bail upon furnishing a bond of Rs.1,000,00 /- (Rupees One Lakh) each, with two sureties of like amount each, one of whom must be local, to the

satisfaction of the learned Chief Judicial Magistrate, Murshidabad on condition that the petitioners shall not intimidate the witnesses or tamper with the evidence in any manner whatsoever and on further condition that while on bail the petitioners shall not enter/live within the territorial jurisdiction of Domkol police station till the sessions case is brought to its logical conclusion.

The petitioners shall furnish the address, where they will live, which is obviously beyond the territorial jurisdiction of Domkol police station, to the Inspector-in-Charge of the said police station and for such purpose they are only permitted to enter into the territorial jurisdiction of Domkol police station.

The petitioners shall also share the telephone numbers both mobile and fixed landline, if there be any, to the Inspector-in-Charge of the concerned police station and shall contact with him over telephone everyday.

Apart from the same, the petitioners shall attend the Court when the instant sessions case is fixed and failure on any solitary ground shall disentitle them to the privilege of bail having granted without any plausible or reasonable cause. It shall be open to the Sessions Judge to cancel the bail and immediately apprehend the petitioners in case of such default without any further reference to this Court.

The aforesaid stringent conditions are relaxed only for the purpose of attending the Court and shall not be construed for any other purposes.

The application for bail, being **CRM 9348 of 2020**, is thus **allowed**.

(Harish Tandon, J)

(Hiranmay Bhattacharyya, J)