

04-12-2020

Subrata  
Item no. 8  
allowed

IN THE HIGH COURT AT CALCUTTA  
Criminal Miscellaneous Jurisdiction

C.R.M. No.9790 of 2020  
Jyostna Begum @ Joytsna & Ors.  
-vs-  
The State of West Bengal

**In Re:** Application under section 439 CrPC in connection with Kaliyaganj P. S. Case No.278 of 2020 dated August 3m 2020 under sections 498A/304B/302/34 IPC and sections 3/4 Dowry Prohibition Act.

Mr. Kaushik Choudhury

...for the petitioners

Mr. Swapan Banerjee

Mr. Suman De

... for the State

The advocate-on-record for the petitioners undertakes to affirm and properly stamp the petition as per the rules within forty-eight hours of resumption of normal functioning of the court. The petition is taken up through video-conference on the basis of such undertaking.

There is a candid statement on behalf of the petitioners that the husband of the victim being the son of the first and second petitioners and the brother of the third petitioner was directly involved in commission of the offences, whereas the petitioners have been entangled simply on the basis of the complaint and the statement of the mother of the victim.

Learned advocate for the petitioners further submits that the sister-in-law (*nanad*) had already been enlarged on bail, and that therefore the petitioners standing on the same footing should also be treated at par.

Mr Banerjee, learned advocate appearing for the State, vehemently opposes the prayer for bail. He submits that the role of the petitioners to the commission of alleged heinous offences cannot

be ruled out and that it would be evident from the statement recorded under section 161 CrPC of the neighbour. He vociferously submits that the husband of the victim have confessed that the victim was strangled by him with the help of the petitioners. Mr Banerjee, thus, submits that such confession must go against the present petitioners.

He further submits that the court should not enter into the arena of sanctity of the confessional statement at the stage of considering an application for bail as the said aspect is a matter of trial. He further submits that the section 164 CrPC statement of the mother of the victim would also reveal that there was a torture for dowry, and therefore the role of the petitioners cannot be erased and/or divorced from the complicity of the husband of the victim to the alleged offences. He further submits that the victim was carrying a seven-month baby in her womb at the time of her death which unfortunately happened in a close proximity to the date of the marriage.

After hearing submissions advanced by the learned counsel for the parties and considering the materials available on record, there is no doubt that the victim died of an unnatural death. The post-mortem report would also reveal that she died because of the strangulation and that the mark can be seen at her neck. What appears to us is whether the petitioners were actively and/or tacitly involved in such offences. More particularly, when learned advocate for the petitioners candidly submits that the husband of the victim, who happened to be the son of the first and second petitioners, was actually involved in the commission of such offences.

We do not find any material, except that the victim was tortured by the petitioners for dowry, from the statement of the mother of the victim recorded under section 164 CrPC. However, the statement of the neighbour recorded under section 161 CrPC does not instill any confidence in us that there is a strong probability of holding the petitioners guilty for such offences on the basis of such

evidence. The confession submitted by Mr Banerjee is a matter of trial, and there is a still gray area when a confession by a third party would be deemed to be confession of the other co-accused.

It is undeniable that the husband of the victim is still in custody and his role into the commission of the offences is evident from the materials available from the case diary produced by the State. We, thus, do not find that there is any justification in keeping the petitioners in custody, nor any custodial interrogation is required.

Hence the petitioners shall be released on bail furnishing a bond of Rs.10,000/- (Rupees ten thousand only) each of two sureties of like amount each, one of whom must be local, subject to the satisfaction of the Chief Judicial Magistrate, Uttar Dinajpur. The petitioners, if released, shall attend the case as and when listed on each day in the trial court. Failure on a solitary occasion may disentitle them to bail, and it would be open to the trial court to pass an order in this regard without any plausible ground.

[Hiranmay Bhattacharyya, J]

[Harish Tandon, J]

