

08.03.2021

Item No.8

Ct.No.28

dc.

Allowed

C.R.M. 535 of 2021

(Via Video Conference)

In Re : An Application for bail under Section 439 of the Code of Criminal Procedure.

And

In Re : **Brajagopal Seni**

... Petitioner.

Mr. Subhabrata Chowdhury,
Ms. Tripti Pandey

... For the Petitioner.

Mr. Nguive Ahmed,
Ms. Trina Mitra

... For the State.

The present application under Section 439 of the Code of Criminal Procedure has been preferred by the petitioner in connection with S.C. Case No. 59 of 2020 arising out of Mahishadal P.S. Case No. 13 of 2020 dated 13.01.2020 under Sections 302/201 of the Indian Penal Code (G.R. Case No. 61/2020).

The learned advocate appearing for the petitioner submits that the petitioner is in custody for more than 400 days and there has been no progress in the case except submission of charge-sheet before the learned court below. The learned advocate further submits that the case is based on circumstantial evidence and the chain of circumstances so appearing in the prosecution papers are too weak for the prosecution to prove its case. Accordingly, the learned advocate prays for bail on any stringent condition.

Mr. Ahmed, learned advocate appearing for the State vehemently objects the prayer for bail, firstly regarding the conduct of the present petitioner as earlier bail applications have been rejected by co-ordinate Bench of this Court and secondly, there has been suppression to that effect by the petitioner. He further submits that it is not only suppression, but a misstatement made in paragraph 1 of the bail application. Additionally, Mr. Ahmed takes us through the documents relating to the statements of the witnesses as well as the seizure list and submits that there were recoveries made at the instance of the present petitioner and the statements of the witnesses would reveal that there was connection between the petitioner and the victim/deceased and further the CDR/SDR would reveal that the petitioner was in close contact with the victim/deceased prior to his death. Mr. Ahmed also relies upon the Memo of Evidence which reflects that number of cases are pending against the present petitioner.

We find that the cases, as referred to by Mr. Ahmed, are mostly under Sections 379/411 of the Indian Penal Code and the nature of the offences so referred to cannot be compared with the present offence.

We have perused the materials on record and considered the submission of the rival parties. We find the conduct of the petitioner, in not disclosing the proper state of facts, is condemnable and we do not approve the same. So far as the merits of the case is concerned, *prima facie*, we find that the petitioner's role on the basis of the evidence

collected is required to be assessed at the time of trial. Thus, having regard to the fact that there is no possibility of trial being concluded in near future, as about 30 witnesses have been relied upon by the prosecution, we are of the opinion that no useful purpose would be subserved by detaining the petitioner in custody. As such, petitioner's prayer for bail is allowed.

Accordingly, we direct that the petitioner, namely, **Brajagopal Seni** shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Purba Medinipur at Tamluk and on further condition that while on bail, the petitioner shall stay outside the jurisdiction of Purba Medinipur and meet with the Officer-in-Charge of the concerned Police Station where he would be residing once a week until further orders.

The Officer-in-Charge of the concerned Police Station shall send a report monthly regarding the attendance of the petitioner to the learned Chief Judicial Magistrate, Purba Medinipur.

With the aforesaid observations, the application for bail, being CRM 535 of 2021, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)

(Tapabrata Chakraborty, J.)