

CRM No.1002 of 2021
(Via video conference)

16.04.21

(S.R.)

Sl.19

Ct.28

In re: An application for bail under Section 439 of the Code of Criminal Procedure filed in connection with Mangolkote Police Station Case No.219 dated 07.09.2019 under Sections 448/323/325/302/307/34 of the Indian Penal Code (G.R. Case No.815 of 2019);

And

In re: Soumen Mondal

... petitioner.

Mr. Himanshu De

Mr. Navanil De

Mr. Rajeshwar Chakraborty

... for the petitioner.

Mr. Madhusudan Sur

Mr. Dipankar Paramanick

...for the State.

The learned advocate for the petitioner submits that the petitioner is in custody for more than 500 days and similarly placed accused persons have been granted anticipatory bail by the learned Sessions Judge-in-charge, Burdwan by an order dated 30th May, 2020.

Mr. Sur, learned advocate appearing for the State draws the attention of this Court to the statement of the witnesses one of whom happens to be the widow of the deceased and as also the post-mortem report and the order dated 28th August, 2020 passed in CRM No.5993 of 2020 by a Coordinate Bench thereby rejecting the prayer for bail of the petitioner.

We have considered the materials appearing in the case diary and we find that the petitioners who have been granted anticipatory bail is similarly placed as the present accused who has approached this Court for bail after suffering more than 500 days in custody. The post-mortem report of the case reflects that the incident is "homicidal". The supporting oral evidence of the witnesses is corroborated so far as the role of the present petitioner. Having regard to the same, we are

not inclined to release the petitioner on bail at this stage. Accordingly, the prayer of bail of the petitioner is rejected.

However, we are compelled to interfere with the order dated 30th May, 2020 passed by the learned Sessions Judge-in-charge, Burdwan after perusal of the lower court's records and the reasons assigned in the said order. It has been observed by the learned Sessions Judge-in-charge, Burdwan while granting anticipatory bail to the accused persons namely, (1) Malay Mondal and (2) Somjit Mondal that *"On perusal of the document filed on behalf of the petitioners it appears that the complainant filed an application before the Bhallya Gram Panchayat for issue of death certificate of his father who died due to an accident. In this case charge sheet has also been filed and one of the accused is on bail. Trial is required to be expedite."*

Hence, considering the materials on record and in the C.D., I am of the view that custodial interrogation of the petitioners is not necessary in the light of the facts and circumstances of the case. Accordingly, payer for anticipatory bail of the accused petitioners is allowed."

We are afraid that the case diary was not appreciated in the proper perspective by the learned Sessions Judge-in-charge, Burdwan and the learned Sessions Judge-in-charge, Burdwan was carried away by a certificate alleged to have been issued by the Bhallya Gram Panchayat.

In view of the aforesaid, we direct the State to take out an appropriate application, in accordance with law regarding the relief granted to the accused persons who are similarly placed by order dated 30th May, 2020 by the learned Sessions Judge-in-charge, Burdwan.

The learned Registrar General is directed to communicate this

order to the learned District Judge, Purba Burdwan for information and taking appropriate action.

It is significant to note that on the self-same materials that were made available to the Coordinate Bench twice it was considered by the Coordinate Bench and the Coordinate Bench rejected the application of the present applicant after recording that there are materials which show, prima facie, involvement of the present petitioner with the murder of the victim. It is surprising that in spite of the said order being produced, the learned Sessions court granted anticipatory bail to two other accused persons similarly placed as the petitioner.

Lower court's records which has been placed before us be sent back to the concerned court immediately along with the order which has been passed in connection with this application.

Department is directed to communicate this order to the learned Sessions Judge-in-charge, Purba Burdwan, immediately.

(Tirthankar Ghosh, J.)

(Soumen Sen, J.)