

147 13.04.2021
rkd Ct. No.28
& (Allowed)
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C.R.M. 1672 of 2021

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure in connection with **Mothabari** P.S. Case No. **185 of 2020** dated **15/05/2020** under Sections **302/102B/34** of the Indian Penal Code.

And

In the matter of: Dilip Mandal

....petitioner.

Mr. Mounick Ghosh

...for the petitioner.

Mr. Swapan Banerjee,
Mr. Suman De

...for the State.

The learned counsel for the petitioner has renewed his prayer for bail. The petitioner is in custody for 310 days.

Learned counsel appearing on behalf of the State, however, opposes the prayer for bail and submits that it would be evident from the statement of independent witnesses that the petitioner is directly involved in the commission of alleged crime. Our attention is also drawn to the order passed by co-ordinate Bench on 5th October, 2020 where the co-ordinate Bench upon perusing the case diary expressed his opinion not to grant bail of the petitioner at that stage. It appears that the co-ordinate Bench was impressed with the submission made by Mr. Madhusudan Sur, learned counsel appearing on behalf of the State opposing the prayer for bail that the theory of last seen together was very much appropriate in the present case as corroborated by the statement of the eyewitness.

We have perused the statement of the witnesses. On

whose statement reliance has been placed by Mr. Swapan Banerjee, the learned counsel appearing on behalf of the State, we find that the statement of the two witnesses mentioned in the charge sheet are in the nature of hearsay evidence. Rinku herself is a co-accused. Conviction cannot be passed on the basis of a statement of a co-accused unless corroborated in material particulars. At this stage, we are considering the prayer for bail. Charge sheet has already been submitted. On the basis of the materials available with the case diary and the nature and extent of complicity of the petitioner in the commission of alleged offence and also having regard to the long period of detention suffered by the petitioner, we are inclined to grant bail to the petitioner.

Accordingly, the petitioner is directed to be released on bail upon furnishing a Bond of Rs. 10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the Learned Chief Judicial Magistrate, Malda subject to the condition that during bail he shall appear before the learned trial court regularly and he shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that he shall meet the Officer-in-charge of the Mothabari Police Station once in two weeks until further orders and with a further condition to comply with the provisions of Section 437(3) of the Code of Criminal Procedure.

In the event the petitioner fails to comply with the conditions as enshrined hereinbefore, it is open to the trial court to cancel the bail without any further reference to this Court.

The application for bail is, thus, 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.)

(Soumen Sen, J.)