

28.06.2021

(Via Video Conference)

Court No. 28
Item No. 50
Suvayan/sb

CRM 2784 of 2021

(bail rejected)

In Re: An application for **Bail** under Section **439** of the Code of Criminal Procedure filed on 17.03.2021 in connection with Amta Police Station Case No. 136 of 2020 dated 19.05.2020 under Sections 302/379/120B of the Indian Penal Code.

and

In the matter of: **Utpal Malik @ Malick**

..... Petitioner

Ms. Ankita Dey, Advocate

Mr. S. M. Obaidullah, Advocate

.....for the Petitioners

Mr. Sudip Ghosh, Advocate

Mr. Bitasok Banerjee, Advocate

..... for the State

Advocate-on-record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking the application is taken up for hearing.

The petitioner has filed the instant application for bail in connection with Amta Police Station Case No. 136 of 2020 dated 19.05.2020 under Sections 302/379/120B of the Indian Penal Code.

Learned advocate for the petitioner, is very much vocal in his submission that the present petitioner stand on the same footing that one of the other co-accused who have been enlarged on bail by an order dated October 17, 2020 passed by the Additional Sessions Judge, First Court, Uluberia, Howrah. The emphasis put to the observations recorded therein that these persons stand on the same footing that of other co-accused i.e. Sk. Abu Taher @ Mahtab who has already been granted bail by this Court on October 13, 2020 in CRM 7786 of 2020.

The learned advocate for the State opposes the prayer for bail. It is submitted that the names of the petitioners have been disclosed in the statement recorded under Section 164 of the Code of Criminal Procedure of a person who has accompanying the deceased and the lady who was standing on the terrace and claimed to have seen the entire incident recorded under Section 161 of the Code of Criminal Procedure. It is thus submitted that the petitioners do not stand on the same footing that of Abu Taher who had been enlarged on bail.

After hearing the respective submission of the parties, the first and foremost question which fell for consideration whether the petitioners stand on the same footing that of Abu Taher as well as the persons who have been enlarged on bail by the Sessions Court. We notice the inconsistency in the finding recorded in the order dated October 17, 2020 passed the Additional Sessions Judge and coordinate Bench dealing with an application for bail filed by the other co-accused. The learned Sessions Judge was of the view that other co-accused stood on the same footing that of Abu Taher whereas the coordinate Bench after meticulous scanning of the materials placed before it, categorically held that Abu Taher standing on different footing than the other co-accused. The order of the Division Bench was passed after the order of the Sessions Judge and obviously it implies that the said order was placed before the coordinate Bench.

The comity requires uniformity and certainly in findings. The findings recorded by the coordinate Bench stand on higher pedestal unless the Court subsequently finds such findings to be erroneous and not borne from the record. Since the coordinate Bench has

held that Abu Taher does not stand on the same footing that of the present petitioners, such finding remains binding on the other coordinate Bench except for the reasons as indicated here-in-above.

Thus, the claim of the petitioners that they stand on the same footing that of the other co-accused who has been enlarged on bail by the Sessions Judge, is not sustainable. We have perused the statement of the eyewitnesses recorded under Sections 164 and 161 of the Code of Criminal Procedure respectively and do not find that the petitioners have been able to make out a strong prima facie case for bail.

The prayer for bail is **rejected**.

The application being **CRM 2784 of 2021** accordingly **dismissed**.

(Harish Tandon, J.)

(Subhasis Dasgupta, J.)