

91 01.07.2021
Kole/ Ct. No.28
ARDR **Rejected**

C.R.M. 3141 of 2021

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on **06/04/2021** in connection with **S.T. Case No. 2(1) of 2019** arising out of **Belgharia Police Station Case No. 420 of 2018** dated **17/06/2018** under Sections **25/27** of the Arms Act and Adding Section 120B of the IPC.

And

In the matter of: - **Md. Kallu @ Md. Kalu**

....petitioner.

Mr. Debasis Kar,
Mr. Subhajit Chowdhury

...for the petitioner.

Mr. Madhusudan Sur.
Mr. Arijit Ganguly,
Mr. Dipankar Pramanik,

...for the UOI

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 Belgharia Police Station case no. 420 of 2018 dated 17/06/2018 under Sections 302/323/34 of the Indian Penal Code.

Learned Advocate for the petitioner submits that the petitioner has been languishing in custody since 17th June, 2018. The trial has already commenced with examination of five major witnesses out of 17 witnesses cited.

Learned Advocate for the petitioner drawing our attention to the order dated 24th February, 2021 passed by the Additional

Sessions Judge, Fast Track, Court No. 3, Barrackpore, has claimed parity submitting that the petitioner is similarly circumstanced with two co-accused persons, who have been already enlarged on bail by the Trial Court, upon seeing the progress of the Trial together with failure of the prosecution for non-production of alamat on the scheduled date of evidence. It is further submitted that the present petitioner is not the principal accused. Though his prayer for bail was rejected earlier on 3rd December, 2019, but co-accused standing on similar circumstance have already granted bail by the Trial Court. Therefor, petitioner should be granted same privilege treating parity with co-accused.

Learned Advocate for the State raises strong objection against the prayer for bail submitting that against the order of the Trial Court granting bail to the co-accused in the midst of the trial, the State has contemplated to prefer an application for cancellation of the same and it is expected to be filed shortly. It is, thus, submitted by the State that the Trial Court considered non-production of the alamat on a date, when admittedly no witness turned up for examination on the scheduled date.

True it is, that the present petitioner is not the principal accused, but he was one of the members of a group and one of the members caused gun-shot death to the deceased. The Trial Court in the midst of trial being oblivious of impact of Covid-19, and alive of the order passed in C.R.M. 11302 of 2019, directing conclusion of trial preferably within one year from 03.12.2019, granted bail to co-accused person admittedly on a date when no

witness was present for evidence. Since the trial has substantially progressed with collection of evidence of some major witnesses, we are of the view that it is not a fit case to grant bail to petitioner treating parity with two (2) accused persons already enlarged on bail by the Trial Court. The prayer for bail is considered and rejected.

The Trial Court is, however, directed to show its all promptitude and alacrity so that the rest of the witnesses, as proposed to be examined by prosecution, may be examined within a reasonable period of time, if necessary upon scheduling the case on consecutive dates, as per mandate of Section 309 Cr.P.C. preferably, within eight months and logical conclusion of this case may come accordingly.

Accordingly, CRM 3141 of 2021 is disposed of.

(Subhasis Dasgupta, J.)

(Harish Tandon, J.)