

27.10.2021
Item no. 05
Ct. 8
AB /PG

C.R.M. 5203 of 2021

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with Serampore P.S. Case No. 213 of 2018 dated 05.08.2018 under Sections 302/201 of the Indian Penal Code.

And

In the Matter of : Firdose Ali @ Ferdosi Ali @
Firdaus Ali @ Dhupia @
Md. Habibullahpetitioner

Mr. Saryati Datta
...for the petitioner

Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Manoranjan Mahata.....for the State

Learned Counsel for the petitioner argues that the petitioner was arrested merely on the basis of the statement of a co-accused and places reliance on the certified copy of the charge sheet to substantiate such statement.

That apart, one of the other co-accused, from whom arms were recovered, although not from the petitioner, has already been enlarged on bail.

Thirdly, it is contended by learned Counsel for the petitioner that the charge sheet was submitted as far back as on October 07, 2018 but the trial has not yet been concluded.

Learned Counsel for the State places reliance on the statement of one Sachin Sarkar, son of Swapan Sarkar under Section 161 of the Code of Criminal Procedure to indicate that the

said independent witness also corroborated the fact that the present petitioner was one of the persons whom the victim accompanied prior to the offence.

However, we find from the records that the other co-accused, who was on worst footing insofar as arms were recovered from the said co-accused as opposed to the petitioner, is already enlarged on bail and that the charge sheet reflects that the basis of the arrest of the petitioner was the statement of the co-accused, which *ipso facto* cannot be incriminating. As such, we are of the opinion that the petitioner ought to be enlarged on bail as well.

Accordingly, C.R.M. 5203 of 2021 is allowed, thereby enlarging the petitioner on bail subject to the following conditions:

(i) The petitioner shall furnish a bond of Rs. 10,000/- (Rupees Ten Thousand Only) with two sureties of like amount each, one of whom should be local, to the satisfaction of the Additional Chief Judicial Magistrate, Serampore.

(ii) The petitioner shall not make out any inducement, threat or promise to any person having direct knowledge of the incident so as to dissuade such person from disclosing the facts before any police officer or Court of law and/or tamper evidence in the meantime;

(iii) The petitioner shall not leave the territorial jurisdiction of the Serampore Police Station until further orders and shall report every fortnight to the Officer-in-Charge of the Serampore Police Station. In default of any of the above conditions, the bail shall automatically stand cancelled and it

would be open to the respondent authorities to re-arrest the petitioner.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Sabyasachi Bhattacharyya, J.)

(Rabindranath Samanta, J.)