

16.11.2021

CRM 5215 of 2021

**Court No.28
Item No.72
(Allowed)**

Akd

In Re:- An application for bail under section 439 of the Code of Criminal Procedure filed in connection with Bankura Police Station Case No. 239 of 2020 dated 11.12.2020 under Sections 302/201/379/34 of the Indian Penal Code and Sections 25/27 of the Arms Act; (G.R. Case No. 1092 of 2020)

And

In the matter of : **Paresh Das @ Joga**
...Petitioner.

Mr. Sandip Chakrabarty,
Mr. Soumik Ganguli.

...For the Petitioner.

Mr. Rudradipta Nandy,
Ms. Amita Gaur.

...For the State.

The petitioner has filed the instant application for bail under Section 439 of the Code of Criminal Procedure after being arrested in connection with Bankura Police Station Case No. 239 of 2020 under Sections 302/201/379/34 of the Indian Penal Code and Sections 25/27 of the Arms Act.

Learned Advocate for the petitioner submits that the petitioner has been implicated in connection with the instant case without any incriminating material found against him. It is further submitted that there is no involvement in the commission of offence and the Investigating Officer without any corroborating evidence has shown him an accused in the charge sheet submitted before the learned Court below. The petitioner is in custody for more than 300 days.

Learned Advocate for the State opposes the prayer for bail. It is submitted that the eyewitness has disclosed the name of the principal accused, who fired the gun, which caused death of the deceased to have accompanied with two other persons. The call details unearthed during investigation would reveal that the petitioner called over the telephone of the deceased on the date of occurrence.

After hearing the respective submissions of the parties and on perusal of the materials available in the case diary, it is

revealed that the name of the petitioner had not been disclosed by the eyewitness in their statement recorded under Sections 161 and 164 of the Code of Criminal Procedure. The said eyewitness disclosed the name of the principal accused namely Toton, from whom the firearm was recovered, without disclosing the name of the petitioner.

Though the Investigating Officer presumed the petitioner to have accompanied with the said principal accused, but, in fact, no Test Identification parade was conducted. There is no recovery of offending weapon from the possession of the petitioner. The reason where the call was made over the telephone of the deceased may raise a presumption, but the same is based on quality of evidence to be produced at the time of trial.

We do not thus find any justification in keeping the petitioner in custody, more particularly charge sheet has already been submitted and the schedule for recording evidence has also been fixed by the Trial Court.

In view of the above, the prayer for bail is allowed.

Accordingly, the petitioner, **Paresh Das @ Joga**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Bankura, subject to the condition that the petitioner shall make himself available on each day of listing of the matter before the Court and shall neither tamper the evidence nor intimidate the witness and shall not leave the jurisdiction of the concerned police station without prior permission of the learned Sessions Judge.

The default of appearance even on a solitary occasion without any justifiable cause shall disentitle the petitioner to the benefit of this order. It shall be open to the learned Sessions Judge to pass an appropriate order without any further reference to this Court.

The application for bail being **CRM 5215 of 2021** is thus **disposed of**.

Since a serious lapses has been noticed during investigation, which is evident from the case diary produced by the learned Advocate for the State, let this order be communicated to the Superintendent of Police, Bankura by the learned Advocate appearing for the State immediately for taking appropriate steps.

(Harish Tandon, J)

(Rabindranath Samanta, J.)